
(2006) 05 JH CK 0046
In the Jharkhand High Court

Mahabir Sahu and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 114

Citation : (2007) CriLJ 653 : (2006) 3 EastCriC 274 : (2006) 46 AllIndCaS 210 : (2006) 3 AIRJharR 682

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellants in C.A. No. 144/99 are Mahabir Sahu and Rasdhari Sahu who were arrayed as A6 and A3 respectively before the 2nd Addl. Sessions Judge, Gumlain S.T.No. 32/98. C.A.No. 161/99 is by Shisha Sahu, Dhano Sahu, Satrugan Sahu and Marwari Sahu who were arrayed as A2, A1, A5 and A4 respectively in the same Sessions Trial. In this judgment, the appellants in both the appeals will be referred as A1 to A6 in the order they were arrayed before the Trial Judge for the sake of convenience and both the appeals are disposed of by the following common judgment.

2. Ram Jatan Sahu (D1) is the brother of Budheshwar Sahu (D2). P.W. 1, Muchan Devi is the wife of D1. The appellants are the agnates of D1 and D2. According to the prosecution, the disputes were pending between the appellants and the two deceased as regards the land. Civil proceedings were pending in Court. This is said to be the motive for the occurrence which, according to the prosecution, took place at 5 p.m. on 18-7-1997.

3. On 18-7-1997, D2, Budheshwar Sahu informed P.W. 1 that he is going to Kurkura market for purchasing medicine. P.W. 3, Butru Chick accompanied him. The husband of P.W. 1, Ram Jatan Sahu (D1) was also preparing himself to go to the market. Both D2 and P.W. 3 went in a cycle and D1 also went to the market

in a cycle accompanied by P.W. 4, Jhariya Chick. P.W. 1 followed them by foot. At the market, D2 purchased medicine after consulting a doctor. He returned to the village from the market and P.W. 3 was also sitting with him in the cycle. D1, Ram Jatan Sahu and P.W. 4 proceeded in a cycle. P.W. 1 left the market and proceeded to the village by taking a short cut. At Tara Kachi road she saw her husband and P.W. 4. At that time, A1 to A6 appeared there with balua in their hands. All the accused surrounded D1. The 1st accused started the attack by inflicting a balua blow and thereafter the other accused and A1 attacked the deceased with balua. P.W. 1 protested but to no avail. The accused went away from the place. In the meantime, Navin Sahu, son of P.W. 1 and D1 came and informed P.W. 1 that Budheshwar Sahu was also killed. Fardbeyan, Ext. 4 was given by P.W. 1 to P.W. 7, Suresh Prasad Yadav at the scene of occurrence at 9 a.m. on 19-7-1997. An F.I.R. was registered on the basis of Ext. 4 and investigation was taken up. P.W. 7, the Police Officer on taking up investigation, conducted inquest over the body of D1 and prepared Ext. 3, the inquest report. He prepared Ext. 3/1, the inquest report for the Inquest conducted over the body of D2, Budheshwar Sahu. The body was then sent to the hospital for the purpose of autopsy.

4. On receipt of the requisition and the dead bodies, P.W. 6, Dr. Ramesh Prasad commenced autopsy on the dead body of D2, Budheshwar Sahu. He found the following injuries:

- (i) Incised wound from inter middle portion of left ear to left side of occipital region 4" ? 10" ? bone with contusion of brain.
- (ii) Incised wound 2-1/2" ? 1/2" ? muscular deep below injury No. 1.
- (iii) Incised wound 1" ? 1/2" ? skin deep below injury No. 2.
- (iv) Incised wound over left parietal region of skull 2" ? 1/2" ? skull deep.
- (v) Incised wound on the left shoulder 1 - 1/2" ? 1/2" ? skin deep. All wound had blood clot.
- (vi) Contusion of brain left side. Nature of injuries antimortem.

The doctor issued Ext. 2, the postmortem certificate with his opinion that death is on account of shock and haemorrhage due to brain injury.

5. The doctor conducted autopsy on the dead body of Ram Jatan Sahu (D1) and found the following injuries:

- (1) Incised wound in front of neck to right side of neck latter side 6" ? 2" vertebral cervical 5th bone deep with blood clot with cutting of trachia osifeyous and large vessels.
- (ii) Incised wound over right cheek 1" ? 1/2" ? skin deep.
- (iii) Incised wound over left side of lower lips to right side of mandible 4 1/2" ? 1" ? mandible cut.

- (iv) Incised wound at chin 2 1/2" ? 1/4" ? muscular deep.
- (v) Incised wound over left cheek below left eye 1" ? 1/2" ? skin deep.
- (vi) Incised wound over left arm 1" ? 1/2" ? skin deep.
- (vii) Incised wound over left hand 2 1/2" ? 1" ? on 4th meta carpole bone cut.
- (viii) Incised wound with penetrating behind right ear 1" ? 1/2" ? bone deep with contusion of brain.
- (ix) Incised wound on right arm 1" ? 1/2" ? skin deep.
- (x) Lacerated wound over frontal region 2" ? 1" ? skin deep with fracture of skull bone.
- (xi) Fracture of body of oxtemum, blood clots present in all wounds.

The doctor issued Ext. 2/1 with his opinion that injury No. 1 is sufficient in the ordinary course of nature to cause death and that injurie Nos. 1 to 9 found on the dead body could have been caused by any sharp cutting weapon and that injury No. 10 could be by blunt and hard substance.

6. After the completion of investigation final report was filed against accused 1 to 6 who denied their complicity in the crime when they were questioned u/s 313, Cr.P.C. No witness was examined on their side.

7. Learned Counsel appearing for the appellants in the above appeal submits that P.Ws. 1, 2, 3 and 4 could not have witnessed the occurrence and that they must have been projected as eye witnesses at a later point of time. Counsel further submits that fardbeyan, Ext. 4 is not the first information statement in this case and there must have been some other information at the P.S. which had been suppressed as it was found to be against the present prosecution version. He therefore submits that the appellants/accused 1 to 6 are entitled for an acquittal. We have heard learned Counsel appearing for the Stale on the above contention.

8. Dr. Ramesh Prasad conducted autopsy on two dead bodies and he issued postmortem certificates. We have already referred to his evidence and noted the injuries in the earlier part of our judgment. The evidence of the doctor and the postmortem certificates issued by him conclusively establish that Ram Jatan Sahu (D1) and Budheshwar Sahu (D2) died on account of homicidal violence.

9. P.W. 1, the wife of D1, P.W. 2, Rukmani Devi, wife of D2 and P.Ws. 3 and 4, the two villagers were produced before the trial Court as the witnesses to the occurrence. It is the evidence of P.W. 1 that on the date of incident, D2 left the village for Kurkura market for consulting a doctor and purchasing medicines. According to her D2 was accompanied by P.W. 3, Butru Chick in a cycle. She has further deposed that her husband also left for the Kurkura market in a cycle arid that later she went to the market by foot. According to her, D2, after purchasing medicines, returned to the village accompanied by P.W. 3, Butru Chick and her husband, accompanied by P.W. 4, Jharia Chick also returned to the village in a

cycle. She has further deposed that she also returned to the village by taking a short cut and on the way saw all the accused accosting her husband and inflicting injuries with Balua. The evidence of P.W. 3 is to the effect that while he was proceeding with D2 accused 1 to 6 appeared before them and that D2, Budheshwar Sahu was inflicted with injuries by all the accused. P.W. 4, according to the prosecution, was also present along with D1 when he was attacked and he had given evidence on the same lines spoken to P.W. 1. The further case of P.W. 1 is that Navln Sahu, her son, came to the scene of occurrence and informed her that Budheshwar Sahu was also killed. According to her, she gave fardbeyan, Ext. 4 at 9 a.m. on 19-7-1997 to P.W. 7, Suresh Prasad Yadav. It is now for the Court to decide whether her evidence can be accepted and whether Ext. 4 is the real first information statement in this case.

10. We will now take up Ext. 4 to find out whether the said statement is the real first information received by the police regarding the occurrence. We have already noticed that according to P.W. 1 such statement was given by her at the scene of occurrence which was adjacent to a national highway. She has deposed on oath that after the occurrence she returned to the market but could not find any one except chowkidar. According to her, she informed the chowkidar about the occurrence and that both of them returned to the scene of occurrence. She went on to admit that at 4 a.m. on 19-7-1997 she accompanied by chowkidar went to the Kamdara P.S. where the chowkidar gave statement regarding the occurrence and that she also gave statement. According to her, the statement given by her was recorded by the police and her signature was also obtained after the same was read over to her. The above admission of P.W. 1 shows that she went to the P.S. accompanied by the chowkidar at 4 a.m. on 19-7-1997 where she gave a statement which was reduced into a writing in which she has affixed her signature. If so, the present case of the prosecution that she gave a statement at 9 a.m. to the Police Officer at the scene of occurrence which was adjacent to the National Highway and the same is Ext. 4 cannot be the first information statement in this case as even, according to P.W. 1 information was given to the P.S. at 4 a.m. which was also reduced into writing. That statement recorded at 4 a.m. at the P.S. in which P.W. 1 has affixed her signature was not produced by the prosecution. The Court, in the above circumstances, has to draw an adverse inference against the prosecution in terms of Section 114(g) of the Evidence Act as it contemplates that the evidence which could be and is not produced would, if produced, be unfavourable to the person withholds it. We, therefore, reject the case of the prosecution that Ext. 4 is the first information statement In this case.

11. Now we will analyse the evidence of P.Ws. 1 to 4 to find out whether their evidence can be accepted and acted upon for finding the accused/appellants guilty. We will first take up the evidence of P.W. 3, Butru Chik. According to the prosecution, it was he who was proceeding with Budheswar Sahu in a cycle when Budheshwar Sahu was attacked. P.W. 3 has stated that after the deceased, Budheshwar Sahu, was attacked he went away from the place to his village. He

has admitted that he did not inform any one in the village about the occurrence. He also stated that on the next day he went to his field to plough his land and that after the arrival of the police he was informed about the occurrence. The conduct of P.W. 3, there fore, shows that he could not have been present and witnessed the occurrence. It is the admitted case that the distance between the scene of occurrence and the village is half a kilometer and if so, we do not find any Justification for P.W. 3 to have kept quiet without even informing any of the villagers so that they could reach the place and take follow up steps. The above answer given by P.W. 3 in his evidence indicates that he was not present at the scene and must have been projected as an eye witness while Ext. 4 was prepared at the scene of occurrence by the police officer. We, therefore, reject his evidence as not trustworthy. We will now take up the evidence of P.W. 2. P.W. 1 did not whisper about the presence of P.W. 2 at the scene of occurrence and P.W. 2 in fact did not speak about the occurrence in her evidence and according to her she was standing near the dead body. We have already noticed that the occurrence had taken place at a place which is at a distance of half a kilometer from the village and she did not also take any step to inform any of the villagers. It is not even the case of P.W. 1 or P.W. 7 that when P.W. 7 visited the scene of occurrence at 9 a.m. on 19-7-1997, she was found near the dead body of her husband. We, therefore, reject her evidence also. When we look at the evidence of P.Ws. 1 and 4 we find that entire evidence of the two witnesses bristles with artificialities. P.W. 1, we have already noticed, claimed in her evidence that she went to the market by foot. She has no explanation to offer as to why she went to the market after her husband left for the market in a cycle. Apparently she had no reason to go to the market at 3 p.m. on 18-7-1997 and if there had been a reason for P.W. 1 to go to the market then she could have as well accompanied her husband in the cycle. She did not do so but only stated that she went to the market by foot after her husband left. The evidence of P.W. 4 shows that it was a rainy evening and if that be the case, it is difficult to accept the version of P.W. 1 that she went to the market without any purpose on a rainy day and that too after her husband left in a cycle. Admittedly, she did not purchase anything at the market but simply returned to the village by taking a short cut. The evidence of P.W. 1 further shows, that, when the distance between the scene of occurrence and the village is only half a kilometer, she did not go to the village to inform the villagers seeking their help and cooperation for setting the law in motion. On the contrary, according to her, she went to the market which is at a distance of half a kilometer in search of persons to Inform about the occurrence. She admitted that at the market she could not find any one except the chowkidar, She has further deposed that she Informed the chowkidar about the occurrence and that later, she and the chowkidar returned to the scene of occurrence and that both of them went to the P.S. at 4 p.m. on 19-7-1997 where a complaint was lodged. It is needless for us to mention at this stage that the prosecution, for reasons best known to it, did not examine the said chowkidar. If really P.W. 1 was present and informed the chowkidar at the market about the occurrence then the said chowkidar will be the right person to speak the presence of P.W. 1 and to say

that the information regarding the occurrence was furnished to him by P.W. 1. The said chowkidar was not even cited as a witness for which there is no explanation from P.W. 7. the Investigating Officer. We, therefore, do not attach any importance to the evidence of P.W. 1. We also find it difficult to accept the evidence of P.W. 4. If P.W. 4 was really present then there would not have been any necessity for P.W. 1 to go to the market in search of some body for seeking the help. The fact that P.W. 1, as claimed in her evidence, that, she went to the market after the occurrence to find out whether she could seek the help of some body itself indicative of the fact that P.W. 4 was not present. Further, if P.W. 4 was present at the scene of occurrence it is but natural for any one to expect to send P.W. 4, if at all required, to the P.S. or to the market seeking help of others. But it was not done so. Similarly, if Navin Sahu, the son of D1 had gone to the scene after the occurrence then at least he could have been sent to the market and thereafter to the Police Station. But neither P.W. 1 nor P.W. 4 played any part except to appear in Court and say that they were present and witnessed the occurrence which, on the face of it, we feel, is false. We, therefore, reject the evidence of P.Ws. 1 and 4.

12. In view of the discussions made above, we are unable to accept the evidence of any of the eye witnesses. We also find it difficult to accept that Ext. 4 is the first information in this case. In the above circumstances, the appellants in both the appeals are entitled for an acquittal. Accordingly both the appeals are allowed. It is reported that the appellants are in jail. They shall be released forthwith, unless wanted in any other case(s).