

(2003) 03 JH CK 0113

In the Jharkhand High Court

Case No : Criminal Appeal No's. 48, 59 and 60 of 1991 (R)

Makhan Singh and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 449

Citation : (2003) 2 BLJR 950 : (2003) 3 JCR 148

Hon'ble Judges : Vinod Kumar Gupta, J; Lakshman Uraon, J

Bench : Division Bench

Advocate : T.R. Bajaj and Randhir Singh, for the Appellant; Lal Jee Sahay and Arun Kr. Sinha for Informant, Manju Shree Patra and , Assistant Public Prosecutor, for the Respondent

Judgement

Lakshman Uraon, J.—The appellants in all these Criminal Appeals have challenged the order of conviction and sentence dated 16-2-1991 passed by learned 2nd Additional Sessions Judge, Jamshedpur in Sessions Trial No. 48/42 of 1984/90 whereby and whereunder appellants in Cr. Appeal No. 60/91, namely Jitendra Singh @ Jitendra Bahadur Singh and Dhirendra Pd. Singh (since dead), were convicted and sentenced to undergo imprisonment for life under Sections 302/149 IPC. These two appellants were further convicted and sentenced to undergo R.I. for seven years u/s 449 of the IPC. These two appellants and appellants Makhan Singh (in Cr. Appeal No. 48/91) and Hiralal Singh (in Cr. Appeal No. 59/91) were further convicted and sentenced to undergo R.I. for two years each for the offence u/s 148 of the IPC. The sentences in respect of appellants Jitendra Singh @ Jitendra Bahadur Singh and Dhirendra Pd. Singh (now dead) were ordered to run concurrently. However, all the appellants in these three appeals we're acquitted from the charge u/s 307/149 IPC.

2. The written information (Ext 3) of the informant Awatar Singh is the basis of this present case alleging therein that when he returned to his Quarter No. 41, Gandak Road, Tin Plate on 31-5-1977 at 10.30 p.m. from Sakchi after clearing

the accounts of his Bus and was likely to come out of his car, then accused Ranjit Singh alias Jita (since dead prior to commitment of the case), his brother Makhan Singh (appellant in Cr. A. No. 48 of 1991), Jitendra Singh, Dhirendra Singh) [(since dead) appellants in Cr. Appeal No. 60 of 1991], Chandra Shekhar Singh (since dead during the course of trial), Hiralal Singh (appellant in Cr. Appeal No. 59/91) and 3-4 others, armed with Bhala, Sword and Bhujali, surrounded his car. Ranjit-Singh @ Jita said that his (informant's) sister had gone to demand money, so he would teach him the manner of realizing money. Soon thereafter, Jita with Bhujali in one hand and with another hand he tried to pull out informant Awatar Singh from his car. 2-3 out of them hit on the roof of the car with Bhujali. Jitendra Singh, Dhirendra Singh, Hiralal Singh and Chandra Shekhar Singh, who had Bhala, Bhujali and Sword, entered into the garden of his house and started assaulting on the persons who were sleeping there on cots. Jitendra Singh gave a Bhala blow on the abdomen of Swarna Singh. Surendra Kaur, sister of the informant, went to save her husband Swarna Singh, and Chandra Shekhar Singh gave Bhala-blow causing injury on her left thing. Informant's mother also proceeded towards the informant, then Ranjit Singh hurled Bhujali causing injury on her left palm. The alleged occurrence was witnessed by, Jarnail Singh (PW-2), Labh Singh (not examined) and many other neighbours who had come out of their houses on hearing alarms. The alleged occurrence took place only because informant's sister had advanced a loan of Rs. 1500/- to the mother of Ranjit Singh. She had gone to demand that loan in the noon on that very day. Mother of Ranjit Singh @ Jita became angry and abused her. Sister of the informant returned to her house telling that his brother will realize the amount from her. Due to that reason, Ranjit Singh @ Jita alongwith his associates--the other appellants committed the alleged occurrence. The informant took all the injured to the Police Station from where the injured were sent for treatment to Government hospital. At the Police Station itself, informant submitted his written report (Ext. 3) at 11.00 p.m., on the basis of which, a case was registered and a formal FIR (Ext 11) was drawn. Charges under Sections 148, 449 and 302/149 IPC were framed against all the appellants. Further, charge u/s 302 IPC was framed against appellant Jitendra Singh (in Cr. Appeal No. 60/91).

3. The prosecution has examined 12 witnesses in order to bring home the charges leveled against the accused-appellants, whereas defence has taken the plea of innocence and false implication due to enmity and also false implication by the then Officer Incharge Narendra Pd Singh of Golmuri PS against whom case was instituted by appellant Dhirendra Pd Singh (now dead) who was also implicated in false police cases and complaint cases by the then O/C, Golmuri PS. The plea of appellant Hiralal Singh (in Cr. Appeal No. 59/91) is that he was on B-shift duty at T.R.F. under DW-1 Rabindra Nath Singh. Rabindra Nath Singh had informed under a letter (Ext. A) signed by him regarding presence of appellant Hiralal Singh on B-shift duty.

4. PW-1 Mahendra Kaur is the sister of informant (PW-6) Awatar Singh and wife

of PW-2 Jarnail Singh. All these three witnesses are the eye-witnesses of the alleged occurrence. Besides these three witnesses, PW-7 Surendra Kaur, wife of the deceased Swarna Singh is also the eye-witnesses who has also sustained injuries. PW-3 Swaroop Singh is an independent eye-witness who had come out of his house for a walk after taking dinner and saw the alleged occurrence. PW-4 Dr. Prem Kumar Sinha examined the injured, namely Surendra Kaur (PW-7) and Gyan Kaur, PW-5 Bhajan Singh is the witness of the inquest report (Ext. 8) prepared by the I.O. on the dead-body of Swarna Singh. PW-8 Majib Ur Rehman is a formal witness who has proved entry in the Indoor Surgical Admission Register dated 26-4-1977 in the pen of the then House Surgeon B.P. Panjiyar (Ext 4), Indoor Bed-head Ticket in the pen of the then House Surgeon D.P. Gupta (Ext. 5) and also some portion written by Dr. J.N. Dandopadhaya (Ext. 5/1) and Dr. D.P. Sinha (Ext. 5/2). The inquest report (Ext. 8) was prepared in the pen of Dr. Shamim Ahmed who is now not available, as he has gone to Saudi Arabia. PW-9 Shyam Lal Shah, formal witness, has proved endorsement on summon in the pen of constable Ram Narayan Dubey, (Ext. 2/2) and signature of the O/C, Golmuri PS (Ext. 2/3) on it. PW-10 Shankar Sah has proved the Entry No. 562 at page 19 dated 3-6-1977 in the pen of late B.M. Jena on the Death Register of T.M.H. (Ext. 2/4). PW. 11 Dr. J.P. Choudhary has proved the post-mortem report (Ext. 6) in the pen and signature of Dr. M.S. Ahmed who had conducted the post-mortem examination. It is relevant to mention here that Dr. M.S. Ahmad was not available for his evidence as he had gone to Saudi Arabia. The injuries were found ante-mortem in nature and the death is possible due to excessive bleeding. PW-12 Girish Chandra Mandal and PW-13 Jawahar Singh are the I.Os. of this case, whereas PW-14 Ramesh Kumar Yadav proved the report in the pen and signature of M.V.I. S.N. Choudhary (Ext 16).

5. The learned 2nd Additional Sessions Judge. Jamshedpur relied upon the evidence of the eye-witness, namely, PW-1 Mahendra Kaur, PW-2 Jarnail Singh, PW-3 Swaroop Singh, PW-6 informant Awatar Singh, PW-7 injured Surendra Kaur and the injury reports of Dr. Prem Kumar Sinha (PW-4) who had examined the injured Surendra Kaur (PW-7) and Gyan Kaur and also the corroborative evidence of post-mortem report (Ext. 6) which is in the pen and signature of Dr. M.S. Ahmad, who is now not available as he has gone to Saudi Arabia, which has been proved by PW-11 Dr. G.P. Choudhary. The learned Court below also found that the evidence of the eye-witnesses regarding place of occurrence were corroborated by the I.O. PW-13 Jawahar Singh. He considered the injury reports (Exts. 1 and 1/1), Production List (Ext. 9), Seizure-list (Ext. 10), report of the M.V.I. (Ext. 16) and found the prosecution case proved against these appellants and convicted them and sentenced them, as sated above.

6. Before advertng to the evidence of this case, it is pertinent to mention that Dharendra Pd Singh, in Cr. Appeal No. 60 of 1991, died on 28-10-2002. Hence the appeal with regard to this appellant was dropped. Before commitment of the case to the Court of Sessions, Ranjit Singh @ Jita died. In course of trial, accused Chandra Shekhar Singh died on 1-2-1989. Hence, the case was dropped against

these dead persons, At this stage, there are only three appellants, namely Makhan Singh (in CrI. Appeal No. 48 of 1991), Hiralal Singh (in Cr. Appeal No. 59 of 1991) and Jitendra Bahadur Singh (in Cr. Appeal No. 60 of 1991) against whom the evidence of the prosecution witnesses has to be considered carefully as only the interested witnesses, who are closely related with the deceased, have been examined by the prosecution except PW-3 Swaroop Singh, an independent eye-witnesses.

7. The alleged occurrence took place only because PW-1 Mahendra Kaur had advanced Rs. 1500/- to the mother of Ranjit Singh @ Jita (since dead). When she demanded back her money on 31-5-1977 at about noon, then mother of Jita entered into an altercation with her. PW-1 returned her home informing mother of Jita that her brother would realize the amount. As it was family loan, hence there is no document regarding advancement of loan by this witness to the mother of Ranjit Singh @ Jita. Due to that reason, on 31 -5-1977 at about 10.30 p.m., Ranjit Singh @ Jita along with his associates Chandra Shekhar Singh, Dharendra Singh (both since dead), Makhan Singh, Hiralal Singh, Jitendra Singh (All three appellants here) and others went to the door of Quarter No. 41 Gandak Road, Tin Plate of the informant. All the appellants were armed with Bhala, Sword and Bhujali. They tried to bring out the informant (PW-6) from his car, when he was likely to come out from the car. But informant Awatar Singh (PW-6) could not be brought out of his car. His raised alarm. The appellants hurled Bhala, Sword and Bhujali blows on the roof of the car. On the alarm of PW-6 Awatar Singh, his sister PW-1 Mahendra Kaur and her husband PW-2 Jarnail Singh came there. They saw Jitendra Singh, Dharendra Singh, Jita Singh and Chandra Shekhar Singh, armed with Bhala, Bhujali and Sword, entering inside the garden of the quarter of the informant where Swarna Singh, his wife Surendra Kaur (PW-7) and mother Gyan Kaur were sleeping on cots. On hearing alarm, Swarna Singh stood and was likely to come to informant Awatar Singh, then Jitendra Singh (appellant in Cr. Appeal No. 60 of 1991) gave a Bhala blow on his abdomen. When PW-7 Surendra Kaur (wife of deceased Swarna Singh) went to rescue her husband, then Chandra Shekhar Singh (since dead), gave a Bhala blow causing injury on her left thigh. When Gyan Kaur also went ahead, then Ranjit Singh @ Jita (since dead) hurled Bhujali causing injury on her left palm. The alleged occurrence was witnessed by PW-2 Jarnail Singh, PW-3 Swaroop Singh and PW-7 Surendra Kaur who have corroborated the evidence of informant Awatar Singh (PW-6). PW-6 Awatar Singh, the informant, has supported his written report (Ext. 3) without any contradiction. On raising alarm, the neighbours assembled there and the assailants fled away. All the injured, namely Swarna Singh, his wife Surendra Kaur (PW-7) and mother Gyan Kaur were taken to the Police Station and from there, they were sent to M.G.M. Hospital. The informant, thereafter, gave his written report to the police at the Police Station itself. On the next day injured Swarna Singh was referred to T.M.H. for treatment. As the injuries sustained by Surendra Kaur (PW-7) and Gyan Kaur were simple in nature, they were discharged in the same night after giving first

aid. After two day, Swarna Singh succumbed to his injuries at T.M.H. in course of his treatment. The I.O., prepared inquest report (Ext. 8) and sent the dead-body for post-mortem examination. Dr. G.P. Choudhary (PW-11) proved the post-mortem report (Ext 6) which is in the pen and signature of Dr. M.S. Ahmed. The doctor who conducted the post-mortem examination on the dead-body of Swarna Singh, found stabbing wound 2 cm. below the umbilicus about 2" x 2" with two surgical incised wounds. The death was due to shock caused by haemorrhage and injury of intestine which was penetrating wound caused by pointed weapon. I.O. (PW-13) in course of his investigation recorded the statement of injured Swarna Singh in the hospital who stated before him that he was sleeping on a cot in front of his house. On the west of his cot, his wife Surendra Kaur (PW-7) was sleeping on a cot. At about 10.00 p.m. Awatar Singh (informant) came on a car and near the gate he was surrounded by 9-10 persons. On his alarm, Swarna Singh was likely to arise, then Jitendra Singh gave Bhala blow on his abdomen. Swarna Singh pressed his abdomen and sat on the cot. When his wife went to rescue him, then she was also given a Bhata-blow. His mother-in-law Gyan Kaur was assaulted with Bhujali by Dharendra Singh (since dead). The statement of Swarna Singh (deceased) was recorded in paragraph 5 of the case diary which was marked Ext. 12 with objection. The place of occurrence is the quarter of Tin Plate Company situated at Gandak Road House No. 41/L-4. There is boundary in front of the quarter. An electric pole is towards West on the road at a distance of 10 yards from that P/O. He found bloodstained spot near the cot which was seized and prepared seizure-list in carbon process (Ext. 3). On 2-6-1977 Awatar Singh, informant produced one white baniyan having bloodstains on the abdomen portion with a hole, which was worn by injured Swarna Singh. He also produced one bloodstained Jumper and one bloodstained Salwar. These wearing clothes were also found pierced on the left thigh. Those were worn by Surendra Kaur (PW-7). He prepared seizure-list in carbon process in respect of these articles (Ext. 15). He did not think it that the injury was so serious, hence he did not take any step for recording his dying declaration by any Magistrate He simply recorded his statement as a witness in this case in course of investigation u/s 161 Cr. P.C.

8. Informant Awatar Singh @ Tani (PW-6) has deposed that when he reached to his quarter and was about to come out of the Car, the appellants tried to pull him out of the Car. When the gate of the Car could not be opened, then the assailants, who were 8-9 in number, hit on the roof of the Car. The Car was found having marks of violence which, the M.V.I. in his report (Ext. 16) has mentioned. Informant (PW-6) and the other eye-witnesses have deposed that no injury was caused to Awatar Singh. On alarm when Swarna Singh, who was sleeping on a cot inside the boundary wall of his quarter, woke up and stood to come to the informant. Awatar Singh (PW-6) and at that moment Jitendra Singh, Dharendra Singh, Hiralal Singh and Chandra Shekhar Singh, armed with Bhala, Bhujali and sword, entered into the garden of the house and started assaulting Swarna Singh, his wife Surendra Kaur and mother-in-law Gyan Kaur. A bulb was burning

in a nearby electric pole which is in between Quarter Nos. 43 and 45. PW-1 and PW-2 are in occupation of Quarter No. 43, whereas Swarna Singh was in occupation of Quarter No. 41. Both these quarters are adjacent to each other. The alleged occurrence took place at 10.30 p.m. Hence the only eye-witnesses are the members of the family closely related to deceased Swarna Singh. PW-1 Mahendra Kaur and PW-2 Jarnail Singh were sleeping in their quarter No. 43. On alarm they woke up and went to the P/O and saw the alleged occurrence. PW-3 Swaroop Singh, an independent witness, also went there on hearing the alarm. All these three witnesses saw, Jitendra Singh, Dharendra Singh, Chandra Shekhar Singh and Ranjit Singh @ Jita there along with 4-5 other persons who had surrounded the car of PW-6 Awatar Singh @ Tani. They have deposed that on alarm, Swarna Singh, who was sleeping within the boundary of his house on the garden, woke up, stood to come to Awatar Singh, then Jitendra Singh, Chandra Shekhar Singh and Ranjit Singh @ Jita entered into the boundary. All of them have deposed that Jitendra Singh gave a Bhala blow on the abdomen of Swarna Singh. When Surendra Kaur (PW-7) went to save her husband, then she was given Bhala-blow by Chandra Shekhar Singh on her thigh. When Gyan Kaur went to save Awatar Singh, she was also given Bhujali-blow on her left palm by Ranjit Singh @ Jita. The evidence of these witnesses was also corroborated by injured PW-7 Surendra Kaur. PW-4 Dr. Prem Kumar Sinha examined the injured Surendra Kaur and found punctured wound over the lateral aspect of the left thigh in its upper part measuring 1/2" x 1/4" x 1" and one abrasion over the flexion aspect of the right hand 5" above the wrist joint measuring 1/2" x 1/8". Injury No. 1 was caused by sharp pointed instrument and Injury No. 2 was caused by hard and blunt substance. Both these injuries were simple in nature. He also examined Gyan Kaur and found lacerated wound over her left palm above the ring finger measuring 1/3" x 1/8" x 1/6" caused by hard and blunt substance simple in nature which may be caused by blunt portion or handle of Bhujali. The I.O. found the Salvar and Jumper with bloodstains and piercing hole near the upper left thigh which corroborates the injuries sustained by Surendra Kaur (PW-7) by Bhala-blow caused to her by Chandra Shekhar Singh.

9. In view of above considered evidence, oral and documentary, I find that the appellants along with 7-8 others had surrounded the car of the informant Awatar Singh @ Tani and hit the roof of the car and there were marks of violence found by the M.V.I. who submitted his report (Ext. 16) which corroborates the prosecution case. The first place of occurrence is outside the gate when the appellants and others hit the body of the car as Awatar Singh @ Tani (PW-6) could not be brought out the Car. PW-6 Awatar Singh @ Tani Singh did not sustain any injury as he was not assaulted by any of the assailants. On his alarm, Swarna Singh, who was sleeping on a cot, woke up and stood to come to Awatar Singh. Then appellant Jitendra Singh (in CrI. Appeal No. 60/91), Chandra Shekhar Singh (since dead) and Ranjit Singh @ Jita (since dead) entered inside the boundary wall. All the eye-witnesses-PW-1, PW-2, PW-3, PW-6 and PW-7 have deposed that Jitendra Singh gave a Bhala-blow on the abdomen of Swarna

Singh. Swarna Singh pressed the abdomen and sat on the cot. His wife Surendra Kaur (PW-7) was assaulted with Bhala by Chandra Shekhar Singh on her left thigh and Gyan Kaur was given Bhujali-blow with the blunt portion or handle of the Bhujali on her left palm. Chandra Shekhar Singh and Ranjit Singh @ Jita, who have assaulted PW-7, have died. There is consistent ocular evidence corroborated by the post-mortem report against appellant Jitendra Bahadur Singh that he gave only one Bhala-blow on the abdomen of Swarna Singh who succumbed to his injury on 3-6-1977 in course of his treatment in T.M.H. On the other hand, there is no evidence of any overt act committed by Makhan Singh (appellant in Cr. Appeal No. 48/91) and Hiralal Singh (appellant in Cr. Appeal No. 59/91). The learned Counsel on behalf of these appellants has submitted that they cannot be convicted u/s 302 IPC with the aid of Section 149 of the Indian Penal Code, as both these appellants in Cr. Appeal Nos. 48/91 and 59/91 did not take any active role in assaulting the deceased and the injured and has relied upon the case reported in 2002 Cr. Law Journal 4658, Shiva Shankar Pandey and Ors., appellants v. State of Bihar, Respondent. The fact of the case is very similar to the case relied upon by the learned Counsel for the appellants that there are two places of occurrence, one is outside the gate where informant Awatar Singh @ Tani stopped his car and remained inside the car raising alarm. He could not sustain any injury as he could not be brought out of the car. Only his car was hit. The allegation against Jitendra Singh (appellant), Chandra Shekhar Singh (since dead), and Ranjit Singh @ Jita (since dead) is that they entered into the garden and appellant Jitendra Singh gave a Bhala-blow on the abdomen of Swarna Singh who stood from his cot on which he was sleeping and was likely to come to the help of informant Awatar Singh (PW-6). Thus, the only assailant on Swarna Singh is appellant Jitendra Singh. These two appellants-Makhan Singh (in Cr. Appeal No. 48/91) and Hiralal Singh (in Cr. Appeal No. 59/91) did not enter inside the boundary wall in the garden. There is no overt act alleged against them. Hence the conviction and sentence of both these appellants for the offence cannot be sustained invoking Section 149 IPC. Both these appellants had no common object or intention to cause murder of Swarna Singh. The object of going to the door of the informant was only to teach lesson to the informant as his sister had gone to realize the loan amount of Rs. 1500/- from the mother of appellant Ranjit Singh. Both the parties were on inimical terms. After the alleged occurrence, Ranjit Singh @ Jita was murdered and in that murder case, the informant and others were made accused. There is no evidence of any eye-witnesses against both these appellants that they played any role in giving any assault on the deceased or the injured or even there is no evidence that they caused any damage to the car of the informant. Hence the conviction and sentence against both these appellants in Cr. Appeal Nos. 48/91 and 59/91 cannot be sustained, rather the learned Court below did not properly consider and appreciate the evidence of the eye-witnesses regarding any role played by both these appellants i.e., Makhan Singh and Hiralal Singh.

10. In the result, I find merit in Cr. Appeal No. 48 of 1991 and Cr. Appeal No. 59

of 1991 in respect of appellants Makhan Singh and Hiralal Singh respectively and which are allowed. They are acquitted and the conviction and sentence passed against them are set aside. As they are on bail, hence they are discharged from the liability of bail bonds. On the other hand, I do not find any legal infirmity regarding the findings of the guilt of appellant Jitendra Bahadur Singh and his conviction and sentence passed by 2nd Additional Sessions Judge, Jamshedpur in Sessions Trial No. 48/42 of 1994/30 in Cr. Appeal No. 60 of 1991 which fails and the criminal appeal so far this appellant Jitendra Bahadur Singh @ Jitendra Singh is concerned, is dismissed and the order of conviction and sentence passed by the learned Court below is hereby affirmed.

Cr. Appeal No. 48 of 1991 and Cr. Appeal No. 59 of 1991 Allowed; Cr. Appeal No. 60 of 1999 dismissed.