
(2006) 07 JH CK 0005

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 121 of 1991 (R)

Mochi Ram Singh Bhumij

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 300, 302, 304, 324, 34

Citation : (2006) 4 JCR 161

Hon'ble Judges : R.K. Merathia, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : A.K. Kashyap, for the Appellant; Shekhar Sinha, APP., for the Respondent

Judgement

R.K. Merathia, J.—This appeal is directed against the judgment of conviction u/s 302, IPC and order of sentence of life imprisonment, both dated 3.4.1991, passed by Shri M.P. Tiwari, 3rd Additional Sessions Judge, Jamshedpur in Sessions Trial No. 576 of 1989.

2. According to the Fardbeyan, lodged by Asha Bhumij (PW 2), wife of Mangal (the deceased), on 6.2.1989 at about 2 p.m. when Mangal was unloading bricks for constructing house on his land, which he got in his share from his father, the appellant who happens to be step-brother of the deceased, with Farsa, and his son Bharat (since acquitted) with arrow came out and protested to the unloading of bricks saying that the land belonged to them. On this, there was altercation and then the appellant chased Mangal and Assaulted him by "Farsa", on his head, hands and legs, due to which he fell down. The incident was witnessed by nephew of the deceased Lobo Manjhi (PW 6); her "Sautan Bharti (PW 4) and the neighbour Jhari Mahto (PW 9). The said Fardbeyan, was recorded at 4.30 p.m. i.e. after about two and half hours of the occurrence, at the Government Hospital. Appellant and his son-Bharat were put on trial and they were charged u/s 302/34, IPC.

3. PW 1 has proved the seizure of four arrows including one blood stained arrow from the house of the appellant. This witness has also proved seizure of blood stained soil from the house of Sushil.

PW 2 (Informant) inter alia, stated that the appellant-Mochiram, his son-Bharat and his wife were assaulting the deceased. Appellant was having "Farsa" in his hand. Bharat was having sword in his hand and appellant's wife was having Ballam in her hand. She further said that when her husband was getting the bricks unloaded on his land, the appellant and his son came there running and started driving away Mangal. Mangal ran and entered into the house of Shibu. The accused persons started assaulting him. She and PW 4 went to save her husband. The land on which Mangal was keeping the bricks was being possessed by him as per the partition between him and the appellant. In the cross-examination, this witness said that the quarrel continued for about an hour. She went to the police station and informed about the quarrel whereupon the police officer wrote something and came along with her. When the police officer reached at her house, the appellant was at police station. There was a "Farsa" injury in the hand of the appellant. Her husband died in the hospital during treatment on the same day. She stated that after the death of her husband she and the appellant jointly sold some lands. The defence has tried to make out a case of joint possession and private defence.

PW 3 is the doctor, who conducted post-mortem on Mangal. He found one abrasion over the back of loin: 13 incised wounds caused by heavy sharp cutting weapon such as "Farsa" and "Talwar" and fracture of second right rib caused by hard and blunt substance. He also found substantial quantity of alcohol in the stomach of the deceased.

PW 4, Bharti is the second wife of the deceased. She corroborated the version of PW 2. PW 5 has simply said that he is not the correct person. PW 6, Lobo Manjhi, a common relative was declared hostile. He said that he went at the place of occurrence after the occurrence and the informant told him that the appellant and his son has injured Mangal who was taken to hospital. PW 7 Kalu Singh and PW 10 Krishna Nand Singh went with the informant and the deceased to the hospital.

PW 8 Md. Sanaullah is the Investigating Officer. He said that the place of occurrence was the house of Sushil Dutta but he does not reside there. At the time of occurrence, the door of the house was open. He was informed by one constable-Awadhesh Singh that some occurrence has taken place and on the basis of which S.D.E. No. 108 dated 6.2.1989 was recorded. When he reached at the place of occurrence, Mangal Singh's heart was beating. He was immediately sent to hospital. He did not take statement of any person present at the place of occurrence, as police were anxious to save the life of injured. No enquiry was made from the injured. At the place of occurrence, appellant was present, who was also taken to hospital as he also had sharp cut grievous injury on his hand. The doctor prepared the injury report. Appellant was taken into custody

immediately. The place of occurrence was one and half kilometers from the police station. He registered a case u/s 324, IPC, on the statement of the appellant and took up investigation of the said counter case, being Mango P.S. Case No. 22/1989. Defence tried to show some contradictions in the statements of PWs given before this witness during investigation.

PW 9, who, as per the FIR is the eyewitness, said in his evidence that he did not see the "Marpit. This witness said that he and the deceased-Mangal were accused In a case of attempting murder of the father of the appellant in which the appellant was a witness. There is a liquor shop in the house of Sushil. PW 11 is the Judicial Magistrate, before whom, the statement of appellant was recorded u/s 164, Cr PC. PW 12 is also a Judicial Magistrate, who wrote the said statement.

DW 1 is a dresser in the hospital, who proved Ext. A, the injury report of the appellant. DW-2 proved the horoscope of Bharat Bhumji to prove that he was minor at the time of occurrence.

4. Mr. Kashyap, learned Counsel for the appellant submitted that there are vital contradictions regarding the place of occurrence, time of occurrence and manner of occurrence. He further submitted that before the Fardbeyan, was recorded there was already a report by a police officer and therefore, the Fardbeyan, in question cannot be treated as the First Information Report. He further submitted that Awadhesh Singh, who first informed about the occurrence and the other police constables were not examined. Sushil Dutt, in whose house the alleged incident took place was not examined. He further submitted that the prosecution has not explained the in-Jury caused by hard and blunt substance on the deceased. PW 9 is not the eye-witness as projected.

5. It appears that the IO (PW 8) recorded a "Sanha" being S.D.E. No. 108 on 6.2.1989 when he received information about the occurrence by one constable. A cryptic information is not a First Information Report as per the judgment reported in Sheikh Ishaque and Others Vs. State of Bihar,

6. Even if it is accepted that PW 9 is not an eye-witness, the evidences of PWs 2 and 4 cannot be brushed aside on the basis of minor contradictions pointed out by Mr. Kashyap. PWs 2 and 4 are illiterate, rustic village ladies. The deceased was the husband of PWs 2 and 4. After the occurrence in which he died, the fardbeyan, was recorded in which the gist of the occurrence was mentioned. The fardbeyan, of PW 2 is corroborated by PW 4 and the doctor PW 3. It is true that the name of wife of the appellant was not mentioned in the FIR but PWs 2 and 4, both said that she also assaulted the deceased. The house of Sushil was called as house of Shibu by PWs 2 and 4. Even according to the defence taken by the appellant in his 164 statement the shop of Sushil is said to be the place of occurrence. It is clear from the materials on record that the place of occurrence was the house of Sushil who was not living there and the door of his house was open, in which the deceased entered to save himself. Due to non-examination of the police constable, who gave cryptic information about the occurrence to the

IO and other constables of the Police Station or Sushil Dutt, in whose house, occurrence took place, the prosecution case cannot be doubted. It appears from the evidence of PWs 2 and 4 that the deceased was assaulted by the appellant and his family members, which explains the fracture of rib of the deceased. It also appears from the evidence that the police party took the deceased to the hospital for treatment as he was alive at that time and tried to save his life. The appellant, who also had grievous injury on his hand, was also taken for treatment. Thus, it appears that the police preferred the treatment of the injured persons than indulging in much formality. The contradictions regarding place of occurrence, time of occurrence and manner of occurrence are not vital in view of the fact that the appellant Nos. 2 and 4 are rustic village ladies. The manner of assault is fully proved by the doctor's evidence. The plea of private defence raised by the appellant cannot be accepted. Even as per the defence, the properties were in joint possession. There is nothing to show that the deceased had any weapon in his hand. In his statement, the appellant himself has explained the injury on him by saying that he was hit with a "Garasa" by some unknown assailants. The appellant has not brought on record the allegations made by him against the deceased in the counter case (Mango P.S. Case No. 22 of 1989). Thus, the prosecution cannot suffer for non-explanation of the injury on the appellant. The defence of the appellant as disclosed in his statement u/s 164, Cr PC cannot be accepted. If he saw that his step-brother Mangal was being assaulted by some other persons, his normal conduct would have been to inform the police about this incident also, if he went to lodge the counter case.

7. Out of 13 incised wounds on the person of the deceased, only three were on vital parts of the body such as head and neck. Rest were on forearm, finger, buttock, ear, sole, toe and leg. The appellant was also injured though it appears from Ext. E that in the case lodged by him u/s 324, IPC, final report was submitted by the police. It has also come in evidence that there was altercation and quarrel between the deceased and the appellant for about an hour. It has also come in evidence that the deceased was heavily drunk at the time of occurrence. In these circumstances, the possibility of provocation on the part of the deceased cannot be ruled out, which is covered under exception one of Section 300 of IPC. It further appears that after the death of husband of the informant (PW 2) she sold some lands jointly with the appellant.

8. From the evidence of prosecution, this fact has been established beyond all reasonable doubts that the death of the deceased took place due to assault caused by this appellant.

9. The question is as to whether the appellant assaulted the deceased with an intention to kill him so as to make him liable for the offence u/s 302, IPC or his act comes within the purview of Section 304 II, IPC i.e., culpable homicidal not amounting to murder. From the evidence, we find that there is nothing on the record to show that appellant had any intention to cause death or to cause such bodily injuries which were likely to cause death of the deceased, though the

appellant might have knowledge that all the injuries inflicted may likely to cause death of the deceased. In this view of the matter, in our view, the conviction of the appellant u/s 302, IPC cannot be sustained. Accordingly, the same is set aside. However, in view of the discussion and finding above, the appellant is held guilty u/s 304 II, IPC.

10. So far as the question of sentence is concerned it appears that the appellant must be now about 60 years of age as because at the time of trial he was of 45 years. Since then 15 years have already elapsed. Moreover, this appellant has remained in jail for about three years and therefore in our opinion after such a long lapse of time, it would not be justifiable to send the appellant to jail again. The ends of justice would be met if the appellant is sentenced to the period already spent by him in jail and to pay a fine of Rs. 10,000/- (Ten thousand). Accordingly, the appellant is held guilty for the offence u/s 304 II, IPC and he is sentenced to the period already undergone by him in jail custody and he is further directed to pay a fine of Rs. 10,000/- (Ten thousand) which shall be deposited by the appellant within a period of four weeks from the date of his release. In default of deposit of the fine aforesaid, the appellant shall serve a sentence of rigorous imprisonment for a period of six months. If the fine is so realized, the same shall be paid to the informant i.e. the widow of the deceased.

11. In the result, this appeal is allowed in part as indicated above. The appellant, who has been taken into custody by the order of this Court dated 3.5.2006, is directed to be released forthwith, if not wanted in any other case.

Amareshwar Sahai, J.

I agree.