
(2006) 03 JH CK 0013

In the Jharkhand High Court

Case No : Criminal Appeal No. 137 of 1990 (R)

Moso Soy and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 313
Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2006) 2 JCR 221

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

Bench : Division Bench

Advocate : Kripa Shankar Nanda, for the Appellant; Vibhuti S. Sahay, APP, for the Respondent

Final Decision : Allowed

Judgement

1. The appellants were arrayed as A-2, A-4, A-5, A-7 and A-8 respectively in Sessions Trial No. 419 of 1985 before the Second Additional Sessions Judge, Singhbhum at Chaibasa. They were tried along with six others. The trial Judge, while acquitting the other accused, convicted the appellants along and sentenced each one of them to imprisonment for life u/s 302 read with Section 149 IPC. The present appeal is against the said conviction and sentence.

2. The case of the prosecution is as follows:

There was a land dispute pending between the prosecution witness and the deceased party, and according to the prosecution the occurrence took place at 5 p.m. on 14.1.1982 on account of the said land dispute. At about 5 p.m. on 14.1.1982, Luko Kui, niece of deceased Mithilesh Birua and other took Haria and were talking with each other. At that time the first appellant Moso Soy (A-2), the second appellant Jogo Soy (A-4), the third appellant Jana Soy (A-5) went to the place and took the deceased Mithilesh Birua saying that they wanted to talk with him. The informant, PW 2, Sangram Birua who is the brother of the deceased, came out of the house on hearing hulla. The wife of PW 2 also joined him. PW 2

and PW 4 found some persons surrounding the deceased and beating him with latht. The beating was going on in front of he house of Moso Soy, the first appellant, A-2, A-4 and A-5 as well as A-3 and Kandra Birua, who is not an accused nor a witness, Pradhan Samad (A-10) who was acquitted, Jai Singh Soy (A-9) who was also acquitted, Sembal Soy, who is not a witness nor an accused; Bajai Soy, who is not a witness nor an accused, Dibru Soy (A-11) who was acquitted, Mathura Purty, who is not an accused nor a witness, Juga Birua, Mana Birua and Kandey Birua who were also not accused nor witnesses were assaulting the deceased Mithilesh Birua, PW 2, Sangram Birua attempted to save the deceased, but he was threatened. Thereafter the deceased was taken to the house of one Munda. PW 2 and PW 4, Ludri Kui followed them. By that time, PW 1, daughter of Pugri Kui also reached the place. In the house of Munda, the deceased was beaten by Madho Munda. Lakshman Birua, Sibi Birua, Sikur Samad, Ramdeo Birua, all residents of village Parasi, Mathura Birua and Sandey Birua (they were neither arrayed as accused nor were they cited as witness). The above persons beat the deceased Mithilesh Birua after his hands were tied with a rope by Munda and Sibu Dakwa. He was beaten by all the above persons and Moso Soy. the second appellant (A-4) objected for the above persons beating the deceased. But, as the beating continued, he went out of the house followed by Sikur Samad. He went and informed the others. Thereafter, on 15.1.1982, the body was seen lying in the verandah on a mat near the house of one Manki. The information was received and later a complaint (Ext. 5) was given to the Investigating Officer on 19.2."1982, i.e., a month and five days after the occurrence. The investigation of the crime was taken up and after inquest, the body was sent for postmortem.

3. On receipt of the requisition and the dead body, PW 6, Dr. R.K. Ghosh conducted autopsy on the dead body of the deceased, Mithilesh Birua and he found the following injuries:

- (i) Rigour mortis was present both on lower and upper limbs, eyes were open, mouth half closed, on the head mid zone three way lacerated wound 3" x 1/2" x bone deep on the right eyebrow;
- (ii) On the right eyebrow lacerated wound 1" x 1/2" x bone deep was present;
- (iii) On the left side of the hip joint above the elliace created there was lacerated wound 3" x 1" x bone deep on the left side.
- (iv) From the nose watery liquid was coming out but in the mouth and palm there was no foreign body.

The doctor issued Exhibit 2, the postmortem certificate, with his opinion that the death is on account of fracture of the partial bone and injury to the brain matter and that the injuries suffered by the deceased are sufficient in the ordinary course of nature to cause death.

4. After completion of investigation, the final report was filed.

5. The appellants were questioned u/s 313, Cr PC on the incriminating circumstances appearing against them. They denied all the incriminating circumstances. They did not examine any witness on their side, but marked Exhibit "A", a fardbayan given by the Village Pradhan on 15.1.1982 as regards the death of Mithilesh Birua, the deceased.

6. The learned Counsel appearing for the appellants submits that the trial Judge, having acquitted the other accused on the same set of evidence and the fardbayan, Exhibit 5 being totally against the present version of the witnesses, who claimed to have witnessed the occurrence and in view of Exhibit "A", the fardbayan recorded on 15.1.1982 by the police officer on the dictation of the Village Pradhan as regards the death of Mithilesh Birua, the present fardbayan, Exhibit 5, which itself is against the present prosecution case, is hit by Section 162, Cr PC and therefore, the case of the prosecution is to be thrown out. On the above contention, we have heard learned Counsel appearing for the State.

7. Though there can be no dispute as regards the cause of death of Mithilesh Birua since the same stands proved through the evidence of the doctor, PW 6, who issued the post-mortem certificate, opining the death is on account of homicidal violence, we find it difficult to uphold the conviction of the appellants on the basis of the evidence of PWs 1, 3, 4 and 5, who were examined as witnesses to the occurrence for the following mentioned reasons:

The occurrence, according to the prosecution, took place at 5 p.m. on 14.1.1982. Exhibit "A" is the fardbayan given by the Village Pradhan on 15.1.1982 regarding the death of the said Mithilesh Birua. In the said fardbayan. Exhibit "A", the Village Pradhan has stated that the deceased was leading a wayward life and used to take drink and he must have died on account of excessive drinking. He did not even express any suspicion as regards the cause of death of the deceased, Mithilesh Birua. PW 2, Sangram Birua, who is the brother of the deceased, was also present in the village and his statement was also recorded after the fardbayan, Exhibit "A" was registered as a crime by the police officer. PW 2, in his statement to the police recorded u/s 161, Cr PC did not even whisper a word about the attack made on Mithilesh Birua by any of the appellants. If PW 2 actually knew about the occurrence and PWs 1, 3, 4 and 5 were the witnesses to the occurrence then nothing could have prevented the above witnesses from telling the police officer that the deceased was beaten to death by the persons mentioned in the latter complaint, Exhibit 5 which was alleged to have been given by PW 2. The fardbayan, Exhibit 5, as we have already noted, was given by PW 2 on 19.2.1982, i.e., after 35 days of the incident. A perusal of the Exhibit 5 also shows that PW 2 had given a totally different version when he gave the fardbayan, Exhibit 5 since in the said fardbayan. Exhibit 5, he has mentioned the names of several persons, but did not mention the names of any of the accused who are appellants before this Court. In fact, in the said Exhibit 5 he has stated that the second appellant, Moso Soy (A-2) protested when the persons mentioned in Exhibit 5 started beating the

deceased, Mithileshe Birua, and that the first appellant, Moso Soy (A-2) left the house of Munda as he was afraid that something may befall the deceased. It is, therefore, clear that the prosecution, at the earliest point of time, did not even know that the deceased was done to death by others and did not know the names of any of the appellants. It could also be seen that even in the belated complaint, Exhibit 5 which was given 35 days after the incident, the appellants were not mentioned as assailants; but on the contrary, Moso Soy is referred to as the person who has protested against the assault meted out on the deceased, Mithilesh Birua. In the above background, we are unable to accept the evidence of PWs 1, 3, 4 and 5 who are closely related to PW 2 and the deceased when they gave evidence in Court by giving a different version which is at total variance with the version given by PW 2 in the fardbayan. Exhibit 5. We, therefore, feel unsafe to act upon the evidence of PWs. 1, 3, 4 and 5, especially when the complaint, Exhibit 5 was given after 35 days of the incident, which, in fact, stands destroyed by Exhibit A given by the Village Pradhan on 15.1.1982.

8. On the discussions made above, we allow the appeal by setting aside the conviction of the appellants and consequent sentence imposed upon them.

9. The appeal is allowed. It is reported that the appellants are on bail. They are discharged from, their bail bonds.