

(2007) 07 JH CK 0044
In the Jharkhand High Court

Nanho Lohar

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 26-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 302

Citation : (2008) 1 JCR 81

Hon'ble Judges : Dilip kumar sinha, J;Dhananjay Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The present Cr. Appeal is directed against the judgment and order of sentence passed by the VIth Addl. Judicial Commissioner, Ranchi in S.T. No. 633 of 1994 on 19.7.2000 whereby and whereunder the appellant Nanho Lohar was convicted u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution story, as it stands narrated in the fardbeyan of the informant, Basanti Devi on 13.11.1993, was that her son Pramod Lohar (since deceased) aged about 17/18 years was a dumper driver in A.C.A. Company. It was alleged that on 12.11.1993 at about 12 O'Clock in the night while he was returning from his duty and was passing through the village lane, opposite the house of Nanho Lohar (appellant) he was held by him on account of old enmity and was dragged inside his house. It was further alleged that the appellant inflicted several blows with the dagger and the grinding stone on the head and other parts of his body. On alarm, several villagers long with the informant assembled there where she witnessed screaming of her son Pramod Lohar who was being dragged by the appellant towards railway line and at the sight of the witnesses he escaped leaving Pramod Lohar there. Pramod Lohar narrated when called upon as to the cause of the injuries sustained that he was forcibly dragged inside the house of

the appellant Nanho Lohar who assaulted him with the dagger and grinding stone. The informant found pool of blood in the house of the appellant and grinding stone, smeared with blood used in such assault. In the night itself the injuries of Pramod Lohar were bandaged by the local doctor who referred the injured to other place for better management but in the early morning the victim succumbed his injuries. The police registered Khelari P.S. Case No. 70 of 1993 on 13.11.1999 u/s 302 of the Indian Penal Code and after investigation the police submitted charge sheet against the appellant for the same offence. The appellant was put on trial after framing of charge when pleaded not guilty and claimed to be tried.

3. Only five witnesses could be produced and examined on behalf of the prosecution inspite of the fact that nine witnesses were named in the charge sheet. Besides, the prosecution proved signature of the witness Binod Lohar on the fardbeyan of the informant (Ext.1), signature of the informant Basanti Devi on her fardbeyan (Ext.1/1) and the post mortem report (Ext.3). The police case was investigated by two Investigating Officers but none of them appeared in the witness box on behalf of the prosecution. Similarly, Rajendra Lohar and Ram Charan Lohar, being chargesheeted and important witnesses abstained from the witness box during trial of the appellant and according to the learned Counsel for the appellant, the entire prosecution case was doubtful.

4. The appellant Nanho Lohar in his statement recorded u/s 313 of Cr.P.C. declined his guilt with the specific defence that on the alleged date and time of the occurrence he was not in his house and taking such advantage Pramod Lohar (since deceased) entered into his house with evil design and attempted to tease his wife but on account of alarm raised the villagers assembled there and assaulted him (Pramod Lohar). He further explained that at the relevant time he was playing gambling in the Janki Temple and the occurrence was communicated to him subsequent day. Yet we do not find any evidence adduced on the point of alibi of the appellant.

5. Autopsy of Pramod Lohar was held by P.W.5 Dr. Ajeet Kumar Choudhary, Tutor in the Department of Forensic Science, RMCH on 13.11.1993 at about 16 hours. The doctor after assessing the age of deceased about 17/18 years found the following injuries on his person:

Abrasion

- (i) 5 x 3 cm., 4 x 2 cm. and 3x2 cm. on front and upper part of chest.
- (ii) 3 x 1 cm. on front of left shoulder
- (iii) 3 x 1 cm. on back of left wrist
- (iv) 4 x 1 c.m., 1 x 1/2 cm. and 1 x 1. cm. over back of left fore arm.
- (v) 2 x 1 c.m. on back of left arm
- (vi) 5 x 1 c.m., 2 x 1 cm. and 1x1 cm. on back of right arm lower part.

(vii) 7 x 2 cm. on front and middle part of left leg.

(viii) 2 x 1 cm. and 2x1-1/2 cm. on lateral side and upper part of right thigh

(ix) 8 x 4 cm., 3 x 2 cm, and 2 x 1 c.m. on the fore head.

Lacerated Wound

3 x 1 c.m. x scalp deep over right parietal region of head.

On Dissection

The Doctor found defused contusion of soft tissues of fore head and both parietal temporal scalp and left temporasis muscle. He further found fracture of left 1st to 5th rib with laceration of left lung and presence of blood and blood clot in left chest cavity. There was tear of liver and presence of blood and blood clot in the abdominal cavity

In the opinion of Doctor all the injuries were ante mortem, caused by hard and blunt substance. Death was caused due to shock and Haemorrhage. Time elapsed since death was assessed between 12 to 24 hours from the post mortem examination. He further opined that lacerated wound might be caused by stone and if a man was dragged the injuries in the nature of abrasion could be caused. He proved the post mortem report Ext.2.

In the cross examination the Doctor (P.W.5) admitted that he did not find any sign of treatment over the wounds. He further opined that the deceased might or might not be saved if medical treatment could be immediately provided to him because of tearing of liver and the aforesaid injuries were possible even by fall. The testimony of Doctor no where indicates any injury caused by dagger on the person of Pramod Lohar. He did not rule out the probability that nature of injuries found on the person of the deceased was possible by fall (on the hard surface). According to the Doctor, the injuries No. I to IX in the nature of abrasion, were possible by dragging and that the lacerated wound found on scalp over right parietal region of the deceased could be caused by stone. We find that abrasion though multiple in number were of small dimensions but could be possible by dragging and not by inflicting injuries with any hard and blunt substance like grinding stone or dagger. Similarly, lacerated wound found on the scalp over right parietal of the deceased was also of a small dimension (3 x 1 c.m. x scalp deep). We are, therefore, of the opinion that manner of the occurrence as presented by the prosecution witnesses was not corresponding to the injuries found on the person of the deceased in the post mortem report or vice-versa.

6. P.W.1 Ramcharan Lohar was the uncle of the deceased who testified by describing the occurrence as to how Pramod Lohar was dragged by the appellant to his house while he was returning from his duty in the night of 12.11.1993 and he was assaulted with dagger and grinding stone. On the contrary we find the presence of this witness on the scene according to the his testimony pursuant to alarm raised by Pramod Lohar while he was allegedly being dragged by the

appellant Nanho Lohar towards the railway line and that on arrival of the witnesses the appellant escaped. He testified that Pramod Lohar (since deceased) was taken to his house in injured condition who narrated the circumstances as to the cause of his injuries involving the appellant. He further deposed that he went to Khelari Police station in the night itself with the mother of the deceased Basanti Devi and police also came. The witness further testified that Pramod Lohar succumbed his injuries while a vehicle was being arranged for his removal to Mandar hospital of about 2.30 a.m. The dead body of Pramod Lohar was brought to the police station with the aid of the villagers. In the cross examination the witness admitted that he could not see the appellant inflicting assault but witnessed the appellant dragging Pramod Lohar and that it was the night of Deepawali. The witness admitted by testifying that he along with his son Rinku and the mother of Pramod Lohar had visited the Kheiri police station in the night itself to inform the occurrence and pursuant to that, the Officer-in-charge of the police station came to the house and took Pramod Lohar to the private hospital where the Doctor advised to remove the victim to any better Hospital but Pramod Lohar succumbed at his home by the time a vehicle could be arranged to carry him.

7. P.W.2 Rinku Lohar, son of P.W.1 Ramcharan Lohar, testified by corroborating version of his father. Yet admitted having not seen the appellant assaulting Pramod Lohar but admitted having seen the appellant dragging Pramod Lohar towards railway line and that the appellant escaped when the witnesses arrived. The police was informed by his father in the night and that he also accompanied his father.

8. P.W.3 Binod Lohar is the younger brother of the deceased who testified that in the night of 12.11.1803 at about 12 O'Clock he heard screaming of his brother Pramod Lohar originating from the house of Nanho Lohar and pursuant to that when he rushed towards the origin of screaming, he found the appellant Nanho Lohar dragged his brother Pramod Lohar towards railway line but left him at the sight of the witnesses arriving at the scene and escaped. He further testified having came to learn from his brother Pramod Lohar that while he was passing through the lane opposite the house of the appellant, he (deceased) was forcibly dragged by the appellant inside his house and was assaulted with dagger and grinding stone. Pramod Lohar was immediately removed to home and from there he was taken to Dr. S.K. Roy for treatment but the Doctor advised to take him to a better hospital but Pramod Lohar succumbed his injuries in the night itself. He accompanied his mother to the police station where her statement was recorded and that he identified the appellant on the dock. According to the witness, he was sleeping at the relevant time and on alarm of Pramod Lohar he along with his Mause Ram Charan Lohar (P.W.1) and Ram Prabash Lohar (not examined) rushed towards the origin of alarm but no sooner did they arrive at the distance of 15 steps, the appellant escaped. According to him, Pramod Lohar was brought to Dr. S.K. Roy at about 2 O'Clock in the night with the police and at that time Pramod Lohar was alive. The witness testified that the police had recorded the

statement of Pramod Lohar but such an important statement of the deceased as to any of the circumstances of the transaction which resulted into his death being relevant fact could not be brought on record.

9. P.W.4 Basanti Devi is the informant as well as the mother of the deceased. She testified that occurrence took place at about 2 O'clock in the night of 13th November some five years ago, when she came out on hearing alarm of her son Pramod Lohar she went there at the distance of about 4-5 yards and witnessed the appellant dragging her son "Pramod Lohar towards the railway line but he escaped at the sight of other witnesses Rinku Lohar, Binod Charan and Rajdeo etc. running towards him. Pramod Lohar apprised her that he was assaulted by the appellant with grinding stone and dagger while he was returning from his duty and passing through the lane opposite his house. He disclosed the circumstances that he was forcibly dragged inside the house by the appellant. She further testified that her victim son was removed to Doctor who advised to take to the victim to better hospital but Pramod Lohar succumbed his injury on the way back. Her statement was recorded by the police which was read over and after finding the narration correct, she put her signature (Ext 1/1). She claimed having witnessed appellant at the distance of 10 feet assaulting her son with grinding stone and it was dark night and that her son was removed to the hospital on the police Jeep where he was examined by Dr. Roy.

10. The learned Counsel for the appellant submitted that admittedly there was no eye witness of the occurrence who could see the appellant Nanho Lohar assaulting the victim Pramod Lohar with grinding stone and a dagger, on the contrary, the witnesses are consistent having seen the appellant forcibly taking away Pramod Lohar towards the railway track. Yet, according to the learned Counsel, all the witnesses were highly interested, partisan and related to each other, but the trial court failed to take into consideration of this aspect.

11. The learned Counsel pointed out that all the prosecution witnesses arrived at the scene around 12 O'Clock in the night at a time, upon hearing alarm and claimed having seen the appellant dragging away Pramod Lohar towards railway track. None of them testified claiming having seen the appellant assaulting the deceased with dagger and grinding stone. But the finding of the trial court was against the facts on record and to quote:

In the present case there are evidence of the witnesses to indicate that they saw the accused Nanho Lohar dragging the deceased Pramod Lohar and assaulting him with "Lorha" (a piece of stone used in grinding) and that the deceased Pramod Lohar in injured condition told that accused Nanho Lohar assaulted him.

The learned Counsel further submitted that nine injuries were found in the post mortem examination on the dead body of Pramod Lohar, all in the nature of abrasions and in the opinion of the Doctor when a man was dragged through, the injuries in the nature of abrasion could be caused. Even the injury on the parietal region which was laceration in nature could be caused by fall, in the opinion of

Doctor and therefore, the prosecution failed to prove the specific case that Pramod Lohar died of sustaining injuries caused on his person by the appellant with the help of the dagger and grinding stone.

12. The learned Counsel further exhorted with reference to the statement of the appellant Nanho Lohar, when confronted with incriminating materials, recorded u/s 313 of Cr.P.C. that in his absence when he was out to play gambling in the Janki Mandir in the night of alleged occurrence, Pramod Lohar entered into his house with evil design and attempted to tease his wife but on alarm the villagers assembled there and assaulted Pramod Lohar brutally resulting in number of injuries.

13. The learned Counsel expressed that non-examination of the Investigating Officer highly prejudiced the defence of the appellant in view of the material contained in paragraphs 23 and 27 of the case diary that the Investigating Officer during investigation of case had found the essence of truth that there was illicit relation between the niece of the appellant and the deceased which was opposed and the occurrence did not take place in the manner presented by the prosecution witnesses who were partisan in nature.

14. The learned Counsel further pointed out that the prosecution witnesses were consistent that the Khelari Police visited the place in the night itself and removed Pramod Lohar to the nearest hospital on the police Jeep and at that time Pramod Lohar was alive and, according to P.W.2 Rinku, the police recorded the statement of Pramod Lohar before his death but such statement was suppressed and only for such reason the police did not record the statement of any other witness in the night to treat it Fardbeyan. On the other hand statement of Basanti Devi (informant) was recorded on 13.11.1993 at 8.45 hours at her house where inquest was prepared. But according to P.W. 1 Ramcharan Lohar the dead body was taken to police station by villagers and from there it was sent for postmortem examination which indicates that all processes were carried out at police station and not at the house of the deceased.

15. Finally, the learned Counsel submitted that according to the first informant i.e. the mother of the deceased Basanti Devi P.W.4 she arrived at the scene on hearing alarm, found pool of blood in the house of the appellant and the grinding stone was also lying there but neither blood stained earth nor the grinding stone smeared in blood was seized by police to establish the place of occurrence. The prosecution story as presented in the trial court was highly improbable in view of inconsistency in the chain of circumstances to arrive at the hypothesis of guilt of the appellant for the charge u/s 302 IPC and the sentence therefor, passed against him.

16. Mrs. Chandra Prabha, the learned APP strongly opposed the contention advanced on behalf of the appellant by submitting that P.W. 1, P.W.2, P.W.3 and P.W.4 are consistent having claimed to witness the appellant dragging Pramod Lohar towards railway track and at that time Pramod Lohar was injured. The

appellant escaped at the sight of the above witnesses and it was strong circumstance against the appellant, clubbed with the dying declaration of Pramod Lohar before the aforesaid witnesses. The judgment impugned is well discussed which does not call for interference in appeal.

17. Having regard to the facts and circumstances of the case, argument advanced on behalf of the parties, we find that the defence has posed a question as to whether the statement given by Pramod Lohar (since deceased) after sustaining injuries before the P.Ws 1,2,3 and 4 as to the cause of his death or the circumstances of the transaction which resulted in his death shall be treated as dying declaration u/s 32(1) of the Evidence Act. It is settled law that greater solemnity and sanctity is attached to the words of dying man because a person on the verge of his death is not likely to tell lies or to concoct a case as to implicate an innocent person but the court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The fact remains as to whether in view of the injuries found on the person of the victim, who admittedly died within 2-4 hours of sustaining injuries, was actually capable to explain the circumstances as to the cause of his injuries. P.W.1, P.W.2, P.W.3 and P.W.4 were consistent that Pramod Lohar was removed to the clinic of Dr. S.K. Roy on a police jeep in presence of the Investigating Officer but neither Doctor S.K. Roy nor the Investigating Officer was examined before the trial court in support of the fact that the deceased was capable to speak as to the cause of such injuries sustained by him. The fact cannot be lost sight of that the P.W.2 Rinku Lohar emphatically stated that the police, who had arrived at the house of the informant, pursuant to the communication received by P.W.1, Ramcharan Lohar, P.W.2 Rinku Lohar, P.W.4 Basanti Devi, had recorded the statement of the deceased, giving rise to presumption that for such reason the statement of any other witness was not recorded by him so as to treat it as the FIR. Yet we find that such statement of the deceased was not produced in the court on behalf of the prosecution which gives rise to adverse inference against the prosecution case. We further find that non-examination of Dr. S.K. Roy also prejudiced the defence for being denied of opportunity to cross-examine him as to the nature of the injury sustained by the deceased, whether he was capable to speak or not. The lapses on the part for the prosecution gives rise to presumption as also we find that the prosecution failed to prove that the deceased had delivered his dying declaration before the witnesses in absence of corroboration by the material witnesses such as the Investigating Officer and Dr. S.K. Roy.

18. The fardbeyan of the informant Basanti Devi (P.W.4) recorded at the first point in time before the police was that she found pool of blood in the house of the appellant and that the grinding stone was also there but we find that the police did not care to seize those incriminating materials so as to establish the place of occurrence being the house of the appellant. Similarly, we find that the Investigating Officer did not investigate the case to find out the veracity of the specific defence of the appellant that Pramod Lohar was assaulted by the

villagers on the alarm raised when he entered into the house of the appellant with evil design and attempted to tease his wife and the alibi taken by him that he at the relevant time he was playing gambling in the Janki Temple and the occurrence was communicated to him on the subsequent day. Yet, we venture to look into the case diary and we find from the contents of Paragraphs 23 and 27 which was the finding of the Investigating Officer that occurrence did not take place in the manner presented by the prosecution. But no evidence was produced or adduced on behalf of the appellant to contradict the manner of alleged occurrence or his plea of alibi. Similarly P.W.5, Dr. Ajeet Kumar Choudhary did not find any injury caused by dagger on the person of the deceased in autopsy which was held on 13.11.1993 after about 12 hours of death. All the nine injuries in the nature of abrasion as well as single lacerated wound over the parietal region of the head of the deceased were ante mortem and in the opinion of the Doctor P.W.5, the injuries were possible even by fall and dragging. It was the specific case that the deceased was assaulted with dagger as well as grinding stone but such weapons were not seized and upon careful examination of the injuries found in the postmortem report Ext.3, we are of the opinion that such injuries were not possible alleged to be caused by one person but Doctor failed to explain as to how the tearing of the liver of the deceased could be possible with a grinding stone which was not produced before him. We further find that the appellant was convicted by the trial court beyond the, facts on record as discussed earlier and therefore, we are of the opinion that in the facts and circumstances from which the conclusion of guilt is sought to be drawn in the instant case by the prosecution against the appellant have not been fully and satisfactorily established beyond all reasonable doubt for the reasons stated above and therefore we find and hold that the prosecution failed to prove the case and that the appeal is bound to succeed.

19. In the result, this appeal is allowed and the Judgment of conviction and order of sentence passed by the VIth Addl. Judicial Commissioner, Ranchi in S.T. No. 633 of 1994 on 19.7.2000 against the appellant is set aside. The appellant, Nanho Lohar is acquitted from the charge u/s 302 IPC and he shall be released from jail custody forthwith if not wanted in any other cases.