
(2022) 06 JH CK 0018

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 106 Of 2015

Nedey Birua @ Neru Birwa

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 10-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313
Indian Penal Code, 1860 — Section 34, 302

Citation : (2022) 06 JH CK 0018

Hon'ble Judges : Rongon Mukhopadhyay, J;Rajesh Kumar, J

Bench : Division Bench

Advocate : Gouri Devi, Nehala Sharmin

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J

1. . Heard Mrs. Gouri Devi, learned counsel for the appellant and Mrs. Nehala Sharmin, learned A.P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 31.05.2012 (sentence dated 01.06.2012) passed by Sri Ghanshyam Kumar Mallik, learned Additional Sessions Judge-I, Singhbhum (West) at Chaibasa in Sessions Trial No. 250 of 2001(S), whereby and whereunder, the appellant has been convicted for the offence punishable u/s 302/34 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment (R.I.) for life.

3. A Fardbeyan of Indira Birua was recorded on 04.10.2000 at 9 a.m. in which she has stated that a day before she had come to Langra Hat with her husband and when both were returning back to their home in the evening they found Nedey Birua (appellant), Kiti Birua and Pradip Das standing with bows and arrows. On seeing her husband they started raining arrows and two of the arrows struck her husband on his stomach and left rib and he fell down. It has been

alleged that when the husband of the informant fell down a third arrow was shot at his head. When she started raising an alarm, several persons including Janak Bage, Mihir Birua arrived at the scene at which the accused persons fled away. Her husband was carried by Janak Bage, Mihir Birua and others to the house of the village Munda Motilal Birua and kept in the courtyard. In spite of best efforts no vehicle could be arranged for transporting her husband to the hospital and ultimately he succumbed to his injuries.

Based on the aforesaid allegations, Manjhari P.S. Case No. 17/2000 was instituted against Nedey Birua, Kiti Birua and Pradip Das for the offences punishable u/s 302/34 of the I.P.C. On conclusion of investigation charge-sheet was submitted u/s 302/34 of the I.P.C. and after cognizance was taken, the case was committed to the Court of Sessions vide order dated 30.07.2001. Charge was framed against the present appellant u/s 302/34 of the I.P.C. which was read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried.

One of the co-accused Kiti Birua was convicted vide order 17.11.2003. The present appellant had absconded, but was subsequently apprehended on 24.07.2009 and put to trial.

4. The prosecution has examined as many as seven (07) witnesses in support of its case.

P.W. 1 Indira Birua is the informant and wife of the deceased who has stated that the incident is of 10 years back at about 4 p.m. when she was standing along with her husband in front of a pond near the market. She has stated that the contractors of the market had come and so had Nedey, Kiti and Pradip. They were armed with Bhujali, arrows and pistol. She has deposed that they had murdered her husband with Bhujali and arrow. One arrow was shot at the chest of her husband while a Bhujali blow was given on his head. The incident according to her was witnessed by Janak Bage. Several others had also seen the incident, but all are dead now. After being injured by an arrow her husband was taken for treatment on the next day and he died in the morning.

In her cross examination she has stated that all the three accused used to reside at Sai Tola. She has stated that Pradip had a Bhujali and Kiti had a pistol. There was no previous enmity between her husband and the three accused persons though subsequently she has stated that there was previous enmity. She has also deposed that the accused persons were quarreling with the Sundis and her husband was trying to pacify the situation. She has stated that Kiti had fired from the pistol while Pradip had assaulted on the head of her husband with a Bhujali. A bullet had struck on his back. She had told the Investigating Officer that the accused persons had accompanied the contractor Siram. She had also disclosed that the accused persons had pistol and Bhujali in their possession. This witness has stated that her husband was taken away from the place of occurrence by Chhota and Janak Bage.

P.W. 2 Dhyan Marandi has shown his ignorance about the incident which had taken place.

P.W. 3 Sriram Soren has not supported the prosecution case and has been declared hostile by the prosecution.

P.W. 4 Motilal Birua is the uncle of the informant and a resident of Bara Langra village. He has stated that weekly Hats are held in his village on Tuesdays. About 10 years back, Janak Bage and Mihir Birua had left the husband of Indira Birua in his courtyard. There were three arrows in the body of the husband of Indira. At that time Indira was in her house. The husband of Indira was alive and he had disclosed that Nedey had fired an arrow at him. The husband of Indira died at around 4 a.m. He has deposed that the police was informed by him after which they came and an inquest report was prepared. He had signed on the inquest report which has been marked as Exhibit 1 with objection. The blood stained soil and blood stained cotton were seized and a seizure list was prepared which has been proved and marked as Exhibit 2. He has also proved his signature on another seizure list which has been marked as Exhibit 2/1.

In his cross examination, this witness has stated that he had not seen the occurrence. He had not given any statement to the police that three arrows were struck on the husband of Indira and he had disclosed that Nedey had done a wrong thing with him and arrow was fired by Nedey. He has also stated that efforts were made to get the injured for treatment to Chaibasa, but no means of transportation could be found.

P.W. 5 Dr. Arun Kumar was posted as a Medical Officer, Sadar Hospital Chaibasa on 04.10.2000 on which date he had conducted autopsy on the dead body of Durga Charan Birua and had found the following ante mortem injuries:-

- (i) One arrow wound, with arrow above umbilicifer.
- (ii) Arrow wound, with arrow in left loin.
- (iii) Incised wound 3"X ¼"X bone deep over left parietal region.
- (iv) Incised wound 2"X 1"X 2", 1"X ½"X 2" over left thigh.

The cause of death was opined to be haemorrhage and shock caused by the above injuries. The nature of weapon used was arrow and sharp cutting weapon. This witness has proved the postmortem report which has been marked as Exhibit 4.

P.W. 6 Janak Bage has deposed that the deceased Durga Charan Birua was his brother-in-law. The incident is of the year 2001 when he was murdered by Nedey, Kiti and Pradip with arrows and Bhujali. He was at his house and when he went to the market on hearing some commotion he had seen Nedey, Kiti and Pradip assaulting Durga Charan with arrow and Bhujali. He has stated that Durga Charan suffered injuries on his head and stomach. He had taken Durga Charan to the house of Munda where he died in the morning. He could not be taken to the

hospital since no transportation could be arranged.

In his cross examination he has deposed that when he had arrived at the scene people were running helter skelter. The deceased Durga Charan was lying on the ground and he was surrounded by the contractor Siram and his staffs. Durga Charan had come with Mihir Birua. He had seen Durga Charan being struck with arrow. When he was saved from the clutches of the accused by the contractor, this witness had taken him to the house of the Munda. He had seen Durga Charan being assaulted from his house. He never tried to save Durga Charan since the accused persons had arrows in their possession. He had reached the place of occurrence, when everyone had left. When he had reached the place of occurrence, the contractor, staffs and some villagers were present. When he had reached the field from his house one hour had already elapsed.

5. The appellant has been examined under Section 313 Cr.P.C. in which he has denied his involvement in the occurrence.

6. Mrs. Gouri Devi, learned counsel appearing for the appellant has submitted that there are vital contradictions in the evidence of the witnesses. It has been submitted that several key witnesses who were said to be present at the place of occurrence were not examined by the prosecution. Even the Investigating Officer has not been examined which has caused prejudice to the defence. She has also submitted that the evidence of P.W. 1 is full of contradictions and her evidence also does not attribute any act of assault upon the appellant. She has also submitted that by no stretch of imagination, P.W. 6 can be said to be an eye witness to the occurrence.

7. Mrs. Nehala Sharmin, learned A.P.P. has on the other hand submitted that in the Fardbeyan the informant had categorically named the appellant and two other accused persons of having committed the murder of her husband. As P.W. 1 she has supported the allegations leveled against the appellant and the same has also been corroborated by P.W. 6. She has further stated that the place of occurrence has been well established and therefore the non-examination of the Investigating Officer has not caused any prejudice to the defence.

8. We have heard the learned counsels appearing for both the parties and have also perused the lower court records.

9. It appears from the Fardbeyan that one Mihir Birua had arrived at the scene when the assault was taking place along with Janak Bage and although Janak Bage has been examined as P.W. 6, but Mihir Birua who was a charge sheet witness could not be examined as he had died during trial.

The case of the prosecution heavily relies upon the evidence of P.W. 1, P.W. 4 and P.W. 6 as they claimed to have either witnessed the occurrence or have been privy to the dying declaration of Durga Charan Birua. P.W. 1 who is the informant and wife of the deceased though in her Fardbeyan had described the incident involving all the three accused persons including the appellant in raining arrows

upon her husband, but in her evidence before Court her version has taken a major shift by introducing an altogether divergent manner of occurrence. She in her cross examination has deposed that all the three accused persons were having Bhujali, arrows and pistol and they had in a concerted fashion committed the murder of her husband. Her husband was struck with an arrow on his chest and a Bhujali blow was inflicted on his head. In her cross examination she has deposed that Pradip had a Bhujali while Kiti had a pistol. Though the presence of the appellant has been noted by P.W. 1, but she has clearly stated that Kiti had fired with the pistol while Pradip had assaulted on the head with a Bhujali. She has also stated about the accused persons being armed with pistol and Bhujali having been disclosed to the Investigating Officer by her.

Another important witness seems to be P.W. 4 who though is not an eye witness, but stated about Durga Charan Birua disclosing to him in an injured condition that he was shot with an arrow by the appellant. This version of P.W. 4 implicating the appellant seems to have been improved as in his cross examination, he has categorically denied of making such statement before the Investigating Officer. Such evidence of P.W. 4 therefore has remained unrebutted in absence of the Investigating Officer being examined by the prosecution.

As per the Fardbeyan, P.W. 6 was attributed to have arrived at the place of occurrence along with Mihir Birua and other villagers on hearing the cry of alarm of the informant (P.W. 1) and on seeing them the accused persons had fled away. In his evidence during trial, P.W. 6 has stated that he was in his house when the occurrence had taken place and on hearing some commotion he had gone to the place of occurrence where he had seen the accused persons assaulting Durga Charan with arrow and Bhujali. The house of P.W. 6 is situated at a distance 400 yards from the market where the incident of assault had taken place. In his cross examination he has deposed that he had seen the occurrence from near his house. He did not try to save Durga Charan since the accused persons were armed with arrow. He also says that when everyone went away, he had reached the place of occurrence. At the same time he has noted the presence of the contractor, his staff and villagers when he had gone there. Thus the evidence of P.W. 6 suffers from inherent contradictions as noted above and cannot be safely relied upon of being someone who had witnessed the incident.

The evidence of P.W. 1 and P.W. 6 does not corroborate each other's evidence with respect to the manner of occurrence as well as the involvement of the appellant. Even the motive is not discernable from the evidence of P.W. 1 as she on one hand denies previous enmity and on the other has stated about the existence of animosity between both the sides. The evidence of the Doctor conducting autopsy being P.W. 5 reveals arrow wounds and incised wounds on the person of the deceased which corroborates the version given by P.W. 1 in her Fardbeyan, but such version appears to have been demolished in her evidence during trial. It also appears that several witnesses who were present at the place of occurrence as stated by P.W. 1 and P.W. 6 have not been examined and P.W. 3

who appears to have been present at the place of occurrence have been declared hostile by the prosecution.

10. The learned trial court while convicting the appellant has recorded a cryptic finding and has primarily concentrated on the examination in chief of P.W. 1, P.W. 4 and P.W. 6 though a fleeting reference has been made to their cross examination. The evidence of P.W. 1, P.W. 4 and P.W. 6 have not been properly evaluated, assessed and dissected with respect to the involvement of the appellant in the murder. In such scenario the benefit of doubt therefore has to be extended to the appellant.

11. Accordingly, in view of the discussions made herein above, the judgment and order of conviction and sentence dated 31.05.2012 (sentence dated 01.06.2012) passed by Sri Ghanshyam Kumar Mallik, learned Additional Sessions Judge-I, Singhbhum (West) at Chaibasa in Sessions Trial No. 250 of 2001(S), whereby and whereunder, the appellant has been convicted for the offence punishable u/s 302/34 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment (R.I.) for life, is hereby set aside. This appeal stands allowed. Pending I.As. if any stand disposed of.

12. Since the appellant is in custody, he is directed to be released forthwith, if not wanted in any other case.