
(2006) 05 JH CK 0143
In the Jharkhand High Court

Pehtu Kanwar and Others

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 01-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 324, 34, 452

Citation : (2007) CriLJ 683 : (2006) 3 JLJR 201 : (2006) 3 EastCriC 23 : (2006) 3 AIRJharR 819

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appellants were arrayed as A2, A3, A1 and A4 before the Sessions Judge, Gumla and in the judgment, they will be referred as A1 to A4 in the same order as they were arrayed before the Trial Judge for the sake of convenience. They were charged u/s 452 read with Section 34, I.P.C. and u/s 302 read with Section 34, I.P.C. On being found guilty u/s 452 read with Section 34, I.P.C., each of them was sentenced to undergo rigorous imprisonment for a period of two years. The Trial Judge, finding the appellants guilty, sentenced each of them to ten years rigorous imprisonment u/s 307 read with Section 34, I.P.C., while they were convicted and sentenced to imprisonment for life u/s 302 read with Section 34, I.P.C. The present appeal is against the said conviction and sentence.

2. Basanti Devi, P.W. 4, is the wife of deceased Dibhajan Kanwar (D1). Mango Devi, P.W. 6, is the wife of deceased Sawna Kanwar (D2) and Bhagwati Devi, P.W. 5, is the daughter of Sawna Kanwar (D2). Futail Devi is the wife of deceased Bhawna Kanwar (D3). P.W. 8 Shivnath Kanwar is the brother-in-law of P.W. 4. A1, A2 and A3 are sons of Jagu Kanwar. Birendra Kanwar is the brother-in-law of A1 to A3. A1 to A3 were residing in village - Hathalda where D1 to D3 were also residing. D1 to D3 are brothers and D1 is the eldest of the three. There were land disputes between the accused and the deceased. A1 to A3 threatened D1 to

D3 with their lives. The case that was filed was also disposed of prior to the date of occurrence, which took place at 10.00 p.m. on 1-12-1994.

3. On 1-12-1994, P.W. 8 Shivnath Kanwar visited D1 since D1, who was working at Asta in Madhya Pradesh, had come to the village on leave. D2 and D3, brothers of Dilbhajan Kanwar (D1), were also in the house. They had their meals and started singing songs. After sometime, the appellants-accused were heard abusing D1 to D3. Complement was returned by the deceased. Sometime thereafter A1 to A4 reached the house of D1 and dragged D1, D2 and D3 towards their house. P.W. 6 Mango Devi, P.W. 7 Futail Devi, who is the wife of D3 as well as P.W. 4 Basanti Devi, wife of D1, followed them with lantern. P.W. 5 also went with them. After all the three deceased were dragged out of their house, the accused started inflicting injuries with Tangi. When P.Ws. 5 and 6 intervened to save their husbands from suffering injuries at the hands of the accused, the accused also caused injuries to the witnesses. The ladies raised alarm, but no one came to their help. Thereafter they went to a nearby village Rattasili where they remained for the night and went to the police station on the next day, where fardbeyan, Ext. 3/1, was given by P.W. 4 Basanti Devi. On the basis of Ext. 3/1, a crime was registered as Ext. 3/2. The Police Officer attached to the police station, who was examined as P.W. 14, took up investigation in the crime. On reaching the scene of occurrence, he found the dead bodies in the house of the accused and conducted inquest over the dead body of D1 by preparing inquest report, Ext. 6/1. He also conducted inquest over the dead bodies of D2 and D3 and prepared inquest reports, Exts. 4/1 and 5/1 respectively. He sent P.W.s. 5 and 6 as well as Vikas Kumar, who suffered injuries, to the hospital for their treatment. Three dead bodies were also dispatched to the hospital, requesting the Doctors to conduct autopsy.

4. P.W. 5, Bhagwanti Devi, was examined by P.W. 11, Dr. Birendra Kumar Singh. He found on her person lacerated wounds on the right little finger. The injury report issued by him stands marked as Ext. 9. P.W. 6, Mango Devi, was examined by the same Doctor and he found swelling of upper and lower right eye lids. The Doctor also noticed lacerated wounds on the right eye brow, nose and index finger. The Doctor suspected fracture of metacarpal bones and advised that X-ray be taken. The Doctor noticed another lacerated wound on the left index finger as well as on the right knee. The Doctor issued Ext. 11, the injury report, with his opinion that except injury No. IV, all other injuries are simple in nature.

5. On receipt of the requisition and the dead bodies, Doctor Rajesh Kumar Gupta, P.W. 1, conducted autopsy on the dead body of Bhawna Kanwar, D3, and he found lacerated wounds causing fracture of temporal bone of head and fracture of frontal region of head. He also noticed abrasion causing fracture of sternum as well as 5th, 6th, 7th, 9th and 10th ribs. He noticed another lacerated injury on left side of face of skull causing fracture of middle of mandible and associated injury to soft tissues, muscles and blood vessels. There were also lacerated wounds on right outer supra orbital region. The Doctor issued Ext. 1, the post

mortem certificate, with his opinion that death is on account of shock and haemorrhage due to the injuries.

6. The autopsy over the dead body of Dilbhanjan Kanwar, D1, was conducted by P.W. 9 Dr. A.D.M. Prasad and he found three lacerated wounds on right survival on left foot below the malolous and lacerated injuries behind the right ear with chopped off right pinna. The Doctor also noticed multiple fracture of ribs on both sides including fracture of intereem and noticed large amount of clotted blood inside the chest cavity on both sides. The Doctor noticed sharp cutting injury behind the left ear with fracture of occipital bone and mastoid process. The Doctor issued Ext. 7, the post mortem certificate, with his opinion that death is on account of shock and hemorrhage due to the injuries.

7. Thereafter P.W. 10, Dr. Angray Subhas Chandra, conducted autopsy over the dead body of Sawn a Kanwar, D2, and noticed lacerated injuries on different parts of the body causing fracture of bones. He noticed three incised wounds on the front skull. The Doctor found sharp cutting injuries on right side mandibular region and incised wound was also found on right shoulder. There were many abrasions on the part of chest. The Doctor issued Ext. 8, the post mortem certificate, with his opinion that death is on account of shock and haemorrhage due to the injuries.

8. After the completion of investigation, final report was filed against the accused. They were questioned u/s 313, Cr.P.C. They denied all the incriminating circumstances. A4 came out with a version that since on an earlier incident, he caused injuries to P.W. 5, he has been falsely implicated in the crime.

9. Learned counsel, appearing for the appellants, contends that since it is the case of the prosecution through P.W. 4 that the deceased had taken meals prior to the occurrence, the Doctor ought to have found undigested food in the stomach of all the three deceased and as the Doctors, who conducted autopsy, found only empty stomach, the evidence of the witnesses cannot be accepted. The counsel further submits that the conduct of P.Ws in not going to the police station immediately after the occurrence but by going to a nearby village is highly artificial and hence their evidence must be disbelieved. The counsel further submits that the prosecution did not examine the mother of the deceased, though admittedly she was present in the house on the date of the occurrence. According to the counsel, non-examination of the mother of the deceased is fatal to the prosecution. It is his further submission that on account of land disputes, the appellants have been falsely implicated in the crime and that A4 was falsely implicated because of an earlier incident involving P.W. 5 and A4. On the above contention, we have heard Mr. Sanjay Kumar Srivastava, learned Counsel appearing for the State.

10. The counsel for the appellants did not dispute the cause of death of D1, D2 and D3. The three Doctors, who are P.Ws. 1, 9 and 10 and three post mortem certificates, Exts. 1, 7 and 8 issued by them respectively, conclusively establish

that D1 to D3 died on account of homicidal violence. We, therefore, hold that prosecution succeeded in establishing the cause of death of three persons.

11. P.W. 4 Basanti Devi, who is the wife of D1, P.W. 5 Bhagwanti Devi, who is the daughter of D2 Sawna Kanwar and P.W. 6 Mango Devi, who is the wife of D2 and mother of P.W. 5 and P.W. 7 Futail Devi, who is the wife of Bhawna Kanwar, D3, were examined to speak about the occurrence. Of the four witnesses, P.Ws. 5 and 6 have suffered injuries. P.W. 11, Dr. Birendra Kumar Singh, examined the two injuries witnesses and issued the injury reports, Exts. 9 and 1, for the injuries found on P.Ws. 5 and 6 respectively. P.Ws. 4, 5, 6 and 7 are not only natural witnesses since they were closely related to the deceased and one of them is the daughter of D2, but their evidence is also cogent and convincing. As we have already noticed that P.Ws. 5 and 6 have suffered injuries during the same transaction in which D1 to D3 suffered fatal injuries. It is not the case of the defence that P.Ws. 5 and 6 suffered injuries at a different place and at a different point of time. In fact, on the person of P.W. 6, the Doctor found a grievous injury. It is not even the case of the defence that those injuries were self-inflicted. We also find that the injuries found on the two persons and noted by the Doctor in the injury, reports show that those must have been suffered at the hands of someone and the witnesses have stated that A1 to A3 caused these injuries on them, when they intervened to prevent the attack on the three deceased. On going through the evidence of the four witnesses, we find no reason to reject their evidence, specially when their evidence is corroborated by the injuries found on their person by the Doctor.

12. The fact that there were disputes between the deceased family and the accused family cannot by itself be a reason to reject the prosecution case. It is well known that motive is a double-edged, weapon. According to the prosecution, it is on account of land dispute, the accused dragged the deceased out of their house, took them to their house and thereafter inflicted injuries upon them. The evidence of P.Ws. 4 to 7 that the deceased were taken to the house of the appellant and then they were assaulted stands proved through the evidence of P.W. 14, who, on reaching the scene of occurrence, found the dead bodies in the house of the appellants. In the above background, it is for the accused to explain as to how the dead bodies came to be found in their house. They had no explanation to offer. The injuries found on the persons on P.Ws. 5 and 6 supported by the subsequent finding of the dead bodies in the house of the accused is yet another circumstance for us to accept the evidence of the eye-witnesses and that they spoke the truth, when they gave evidence. We, therefore, reject the contention of the learned Counsel that on account of the motive, A4 was falsely implicated.

13. Similarly, we do not find any substance in the argument of the learned Counsel that as the mother of the three deceased was not examined, the case of the prosecution is to be disbelieved. The Courts never believes in quantity but only believes in quality. We have already noticed that P.Ws. 4 to 7 spoke the

truth, when they gave evidence and non-examination of the mother of the deceased in no way affects the prosecution version. We do not also find any reason to reject the evidence of the eye-witnesses on the ground that they did not go to the police station immediately. Witnesses have given evidence and stated that in spite of the alarm raised by them, villagers did not come to their rescue and therefore, they went to the village, which is nearby and after staying there, went to the police station on the next day. We find the conduct of the witnesses to be natural since all of them were ladies and when the accused had beaten three persons to death, it is natural to expect the wives and daughter of the three deceased persons to escape from the place so that they will not meet with the same fate which their husbands met at the hands of the accused. It is to be remembered that the occurrence took place at 10.00 p.m. and it is difficult for the ladies, who were living in the remote village, to have gone to the police station during the night. We, therefore, reject the said contention also.

14. The last contention of the learned Counsel that since the Doctors, who conducted autopsy on the deceased, found empty stomach, the case of the prosecution that the deceased had their meals and thereafter the occurrence took place cannot be true and hence the evidence of the eye-witnesses is to be disbelieved though looks attractive on the face of it, we find that the said argument does not help the accused in any way. It is to be remembered that the evidence of the witnesses is that after the deceased and the family members took the meals, they were singing and dancing. There is no evidence as to when the deceased had their last meals. It is common knowledge that normally in the villages people take their dinner by sunset and thereafter go to bed. In this case, since DI had come from Madhya Pradesh on leave, the three deceased and other family members would have taken their meals and thereafter were enjoying themselves by singing and dancing. This must have gone on for some time and in the above circumstances and in the absence of any evidence as to when the deceased had their last meals, the Court can only presume that all the deceased must have had meals even by 6.00 p.m. and thereafter the occurrence took place at 10.00 p.m. or so. It is also worthwhile to remember that the occurrence took place in December when sun sets in this part of the country even by 4.45 or 5.00 p.m. In the above circumstances, we are of the view that the fact that the stomach was empty as noticed by the Doctors cannot by itself be a reason to hold that the witnesses were giving false evidence. We reject this contention of the learned counsel.

15. Before we conclude we have to say that Ext. 20, the statement of A1 recorded by P.W. 16, the Judicial Magistrate, cannot be accepted and acted upon. In Ext. 20, A1 had taken the blame on himself by coming with the version that it is he and he alone who caused the injuries on the three deceased as well as witnesses and other accused did not participate in the crime. We do not place any reliance on the statement of A1, which was probably given by him with a view to save his brothers (A2 and A3) and brother-in-law (A4). This conclusion of us is strengthened by the evidence of P.Ws. 4 to 7. We have already accepted their

evidence for the reasons mentioned above.

16. The conviction of the appellants, in the above circumstances, u/s 302 reads with Section 34, I.P.C. and consequent sentences are confirmed. Similarly we also confirm the conviction and sentence imposed on them u/s 452, I.P.C. since they trespassed into the house of the deceased and dragged them to their house. We find it difficult to uphold the conviction of A1 to A4 u/s 307 read with Section 34, I.P.C. as we have already noticed that the Doctor found simple injuries on P.Ws. 5 and 6, though he found one grievous injury on P.W. 6. The said injuries noted by the Doctor, P.W. 11, were on non-vital parts. There is no medical evidence to show that but for the treatment given by the Doctor, the witnesses would have died. We, therefore, set aside the conviction of the accused appellants u/s 307, I.P.C. and instead they are found guilty u/s 324 read with Section 34, I.P.C. and for the said conviction u/s 324 read with Section 34, I.P.C., each one of them is sentenced to one year rigorous imprisonment. We have convicted A1 to A4 u/s 324 read with Section 34, I.P.C. on the ground that though P.W. 11 suspected fracture of right hand of P.W. 6, the prosecution did not mark X-ray report and did not also examine the Radiologist to conclusively establish that P.W. 6 suffered grievous injury.

With the aforesaid modification, this appeal is dismissed.