
(2000) 08 PAT CK 0073

In the Patna High Court

Case No : Criminal Appeal No. 187 of 1991 (R)

Puna Oraon and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 22-08-2000

Acts Referred:

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

Citation : (2000) 3 BLJR 2327

Hon'ble Judges : Narbadeshwar Pandey, J; Ashok Kumar Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Narbadeshwar Pandey and Ashok Kumar Prasad, JJ.—The appellants Puna Oraon and Balku Oraon have been convicted for the offence under Sections 302/34 of the Indian Penal Code and sentenced to undergo imprisonment for life by judgment dated 9th August, 1991 in Sessions Trial No. 215 of 1981.

2. The case of the prosecution, in brief, is that on 31.10.1980, the deceased Sarwa Oraon had gone in the morning to his paddy field for harvesting. At about 10 O'clock, Gunga Oraon (PW-3) informed the informant Ratia Oraon (PW-5) that the appellants after committing murder of Sarwa Oraon had thrown his dead-body in the paddy field. On the basis of the above information, the informant Ratia Oraon (PW-5) submitted a written report before the Officer-in-Charge, Palkot Police Station. The police on the basis of the above report went to the place of occurrence and prepared the inquest report of the dead-body and ultimately sent the same for post-mortem examination. He also recorded the statement of the witnesses and having found a prima facie case submitted charge-sheet under Sections 302/34 of the Indian Penal Code. The Additional Chief Judicial Magistrate, Gulma, thereupon took cognizance of the offence and committed the case to the Court of sessions calling upon the appellants to face trial.

3. The defence of the accused, as would appear from their statement u/s 313 of the Code of Criminal Procedure as well as the trend of cross-examination to the prosecution witnesses was complete denial of the allegations.

4. That prosecution, as would appear from the records of the case, examined altogether 10 witnesses, out of them Potho Oraon (PW-4) was tendered, PWs 6, 7, 8 and 10 were examined as formal witnesses who proved the First Information Report, inquest report, post-mortem report and the case diary. PW-9 is Dr. Basant Lal, who had conducted autopsy of the deceased and had found six injuries on the scalp and other parts of the body. In the opinion of the Doctor, injuries Nos. 1, 2, 4 and 5 were caused by sharp-cutting weapon like Tangi whereas injuries Nos. 3 and 6 were caused by hard blunt substance like Lathi. In the opinion of the Doctor, the cause of death was shock and haemorrhage due to the above injuries. PWs 1, 3 and 5 are the witnesses who had learnt From PW-2 (Mangri Grain) that these two appellants had assaulted Sarwa Oraon in his paddy field, due to which he fell down and ultimately succumbed to injuries. Although the case diary was marked as Ext. 5 but the Investigating Officer of the case was not examined.

5. From the facts as disclosed above, it is thus manifest that PW-2 was the only eye-witness in this case who was present at the place of occurrence at the material time. As would appear from the evidence of PW-2 that on the day of occurrence at about 8 O'clock in the morning, she was going from the house to her bari land, at that very time, she saw Sarwa Oraon (the deceased) was harvesting paddy in his field. In the meantime, both the appellants arrived there armed with Lathis and Tangi. The appellant Puna Oraon assaulted Sarwa Oraon with Lathi due to which he fell down and thereupon the appellant Balku Oraon assaulted him with Tangi, as a result of which Sarwa Oraon succumbed to the injuries. Both the appellants thereafter fled away towards jungle. Although on behalf of the defence, this witness was cross-examined at length but nothing positive could be pointed out on the basis of which her testimony can be doubted nor there was any suggestion to this witness that on account of enmity, etc. she was making a false allegation against them.

6. PW-3 (Gunga Oraon) is son of the deceased Sarwa Oraon and at the time of occurrence, he had gone to graze cattle in that very locality where the occurrence had take place. This witness on hearing bulla arrived at the place of occurrence and saw his father lying injured in the paddy field. Since Mangri Orain (PW-2) was already present at the place of occurrence, this witness learnt that both the appellants after having assaulted his father had fled away in jungle. It would appear from his evidence that immediately after getting information from PW-2 regarding the mariner in which the occurrence had taken place, this witness informed PW-5 (Ratia Oraon), the informant and PW-4 (Photho Oraon) the village Choukidar. This witness has also supported the statement of PW-2 that she had also a land near the place of occurrence and had grown potato.

7. Although as stated above, PWs 1 and 5 are not the eye-witnesses of the

occurrence but having received information about the incident they hurriedly arrived at the place of occurrence and saw Sarwa Oraon lying dead.

8. From the materials noticed above including the evidence of the witness and that of the post-mortem report, there is no manner of doubt that Sarwa Oraon died in his paddy field, due to the injuries caused by Lathi and Tangi. The Doctor has also opined that the injuries found on the person of the deceased were sufficient in ordinary course to cause death. The only question that remains for consideration is whether the prosecution has been able to prove the case beyond all reasonable doubt that it was the appellants who had committed the murder of Sarwa Oraon.

9. Learned Counsel for the appellants contended that as would appear from the materials on record, there is only one eye-witness on the basis of which the appellants have been held guilty for committing the murder of Sarwa Oraon but the trial Court has failed to appreciate that PW-2 was a highly interest witness. Because as would appear from the evidence of PW-3 that after the occurrence, her mortgaged land was returned to her without any payment. He further contended that even the written report submitted by the informant before the police also appears concocted and after-thought because according to the information, he had learnt from PW-3 that both the appellants had committed the murder of Sarwa Oraon but it was not disclosed in the First Information Report actually how PW-3 learnt about the occurrence because admittedly, he was not an eye-witness to the occurrence. PW-3 had learnt about the occurrence from PW-2 as he has disclosed in his evidence before the Court. It was quite unnatural on his part in not disclosing the name of PW-2 before the informant at the time of submitting written report. Therefore, a doubt certainly arose whether the prosecution has come forward with a true version of the case. Learned Counsel then contended that as would appear from the case of the prosecution that PW-2 was present at the time of occurrence and had also disclosed the manner in which the occurrence had taken place to PW-3 but surprisingly when PW-5 the informant and Village Choukidar (PW-4) arrived at the place of occurrence, PW-2 was not found at the place of occurrence. Therefore, this part of unnatural conduct of PW-2 also raises a serious doubt whether she was present at the time of occurrence or she is coming forward to make a false case being an interested witness.

10. True is it as would appear from the evidence of PWs 4 and 5 that when they arrived at the place of occurrence, PW-3 was not found there but it cannot be ignored that occurrence had taken place in this case at 8 O'Clock in the morning whereas these witnesses had arrived at the place of occurrence at 11 O'clock. Therefore, simply because PW-2 was not present at the time when these witnesses had arrived, her evidence cannot be doubted.

11. Learned Counsel, however, referred decisions of this Court in the case of Budhu Mahto, Dipnath Mahto, Rati Mahto and Hawra Mahto Vs. The State of Bihar, , and Dasmal Tudu v. State of Bihar 1999 (1) Cri C 701 (Pat), to show that

the Court should be careful in convicting any accused on the evidence of a single witness. But, in our view, there appears no relevancy of these decisions in this case since they are based on different facts.

12. There is no doubt that the Court should be careful and cautious while awarding conviction of an accused on the basis of the evidence of a single witness, but, in this case, as would appear from the evidence of PW-2 that nothing was suggested on behalf of the defence to show under what circumstances, this witness had come forward to make a false allegation. All the witnesses have categorically stated that PW-2 had a land near the land of the deceased. PW-3 the son of the deceased, has also stated that when he arrived at the place of occurrence he found PW-2 present near the dead-body. Although the Investigating Officer of this case was not examined but as would appear from the case diary (Ext.5) that she was examined by the police on the same day.

13. Therefore, taking into consideration the facts noticed above, in our view, the prosecution has been able to prove beyond all reasonable doubts that the appellants are responsible for committing the murder of Sarwa Oraon. We therefore, find no reason to interfere with the judgment of the trial Court.

14. In the result, this appeal is dismissed as devoid of any merit. The order of conviction and sentence are confirmed. The appellant No. 1 is on bail, hence his bail-bonds are cancelled and he shall be taken in custody forthwith to serve the sentence. The appellant No. 2 is already in custody.