
(2006) 03 JH CK 0033

In the Jharkhand High Court

Case No : Criminal Appeal No. 66 of 1990 (R)

Ram Chandra Singh and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

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

Citation : (2006) 2 JCR 226

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

Bench : Division Bench

Advocate : V.P. Singh, for the Appellant; M.B. Lal, APP, for the Respondent

Final Decision : Allowed

Judgement

1. Ram Chandra Singh and Mastana Singh, appellant No. 1 and appellant No. 2 in this case, were arrayed as A-9 and A-8 respectively before the 6th Addl. Sessions Judge, Palamau, along with eleven others. They were charged under various sections and the appellants were specifically charged u/s 302 IPC. The allegation against them is that they formed unlawful assembly along with other eleven accused at about 11.00 a.m. on 17.12.1983 and that in furtherance of the said unlawful assembly, they caused the death of the deceased, Basant Singh, causing injuries with farsa. The trial Judge on the evidence, both oral and documentary, while acquitting A-9 to A-7 and A-10 to A-13 of all the charges, found the appellants along guilty for the offence u/s 302 IPC, for which each of them was sentenced to imprisonment for life. The appellants, aggrieved by the said order of conviction and sentence, have chosen to prefer the present appeal.

2. The facts as could be discerned from oral and documentary evidence can be briefly summarized as follows:

The deceased, Basant Singh, PW 5 Upendra Singh, PW 6 Mukesh Kumar Singh, PW 8 Pradip Kumar and PW 10 Mahendra Singh were brothers and sons of PW 3.

It is the case of the prosecution that the appellants and the deceased were inimical towards each other on account of a dispute regarding landed property. On 16.12.1983, PW 5 Upendra Singh, PW 6 Mukesh Kumar Singh and PW 12 Daywanti Devi, wife of the deceased, went to plough their field and returned their house at 6.00 p.m. On 17.12.1983 at about 8.00 a.m., they once again went to plough their field and the deceased was also present with them. Shyam Bihari Singh, father-in-law of PW 3, went there to join them for ploughing. At that time, Ram Swaroop Singh A-1, Parsuram Singh A-11, Dadai Singh A-12 and Nandkishore Singh A-13 reached the place and took PW 12 to task for ploughing the field. Thereafter Nagindeo Singh A-3 and Mastana Singh, second appellant (A-8), talked with each other and at about 11.00 a.m., PW 12 Daywanti Devi, wife of the deceased, heard cries emanating from the place. She saw her husband being assaulted by several persons. When she ran to the place and while she was approaching at Bisbigahwa Tand, which was near the land of Ganesh Sao, she saw the first appellant Ram Chandra Singh and second appellant Mastana Singh (A9 and A8) giving farsa blows on her husband Basant Singh. She also found A-1 Ram Swaroop Singh catching hold of the hand of the deceased. The family members including PW 12 attempted to save the deceased Basant Singh but they could not succeed. On the contrary, in the process PWs. 8, 11 and 12 suffered injuries. Thereafter they climbed the roof of the house and through a hole, which was on the wall at a height of 7 feet, they saw the remaining part of the occurrence. After the appellants and other accused persons left the place, PW 12 came down and went to the police station where she lodged the fardheyan with the Sub-Inspector Sheo Bihar Singh at Garwa Police Station. In the meantime, Nagindeo Singh A-3 appeared at the police station and gave a complaint. In the complaint, he has alleged that father of PW 3, the deceased, PW 5, PW 10 and one Naresh Singh attacked the defence party and on account of such attack, Lakshmi Singh, his son, died. The said complaint was also registered as a case in crime No. Garhwa P.S. Case No. 264/183. Investigation was taken up in both the crimes and during the course of investigation, inquest was conducted over the dead body of Basant Singh and the inquest report is Ext. 2. After the inquest, the body of Basant Singh was sent to the hospital with a requisition to the Doctor to conduct autopsy.

3. On receipt of the requisition, PW 1, Dr. Chunni Lal Prasad, conducted autopsy on the dead body and found the following injuries:

- (i) Incised wound over face and neck just below the left lower lobula of pinna 9" x 3" x 2..
- (ii) Incised wound over face just below the injury No. 1 measuring 3" x 2" x 1" and 1/4" gap cutting skin of face,....
- (iii) Incised wound over scalp, occipital region; middle 3" x 1" x bone deep
- (iv) Incised wound over left leg, middle part lateral side 3" x 2" x 1-1/2" cutting left fibula.

(v) Incised wound over skin of tibia 1/2" x 1/2" x 1/2" cutting the middle of tibia and muscles.

The Doctor issued Ext. 1, post-mortem certificate, with his opinion that the death was on account of hemorrhage and shock due to the injuries and the death must have occurred about 24 hours prior to the autopsy.

4. After completion of the investigation, final report was filed against the appellants and other accused.

5. The appellants were questioned u/s 313, Cr PC on the incriminating circumstances appearing against them. They denied all the allegations but examined two witnesses as DW 1 and DW 2. DW 1 was examined to prove Ext. B fardbeyan given by A-3 Nagindeo Singh and Ext. A. DW 2 was examined to prove that there were civil disputes pending between them as regards the land over which prosecution witnesses ploughed on the date of incident. Ext. A was also marked to show that Lakshmi Singh, son of A-3 Nagindeo Singh, died on account of homicidal violence.

6. Learned Counsel appearing for the appellants submits that though the prosecution examined PWs. 5, 6 and 8 as witnesses to the occurrence their evidence is not satisfactory and that they could not have witnessed the occurrence as claimed by them. He submits that PW 14 was only a tendered witness as his evidence in chief-examination was not elicited by the prosecution. It is his further submission that the prosecution had suppressed the genesis and origin of the occurrence since they had not given any explanation for the injuries found on the witnesses and did not explain as to how Lakshmi Singh, son of A-3 Nagindeo Singh, suffered injuries, who, according to the post-mortem certificate Ext-A, died on account of homicidal violence and that the case of the prosecution is to be thrown out as witnesses have suppressed the genesis and origin of the prosecution version.

7. On the above allegation, we have heard Mr. M.B. Lal, learned Counsel appearing for the State.

8. There can be no dispute and in fact, it was not disputed either before the trial Court or before this Court that Basant Singh died on account of homicidal violence and the same stands proved from the evidence of PW 1 and the post-mortem certificate, Ext. 1, issued by him.

9. The question that is to be decided by us is whether the two appellants caused the death of the deceased as claimed by the prosecution. The prosecution, in order to establish that the appellants, who were arrayed as A-9 and A-8 respectively, inflicted farsa blows on the deceased and. that on account of such farsa blows, the deceased died, relied upon the evidence of PWs. 5, 6 and 8, who are brothers of the deceased. "Even at the outset we may say that PWs. 5, 6 and 12 have been declared hostile as they have stated in their evidence that they did not see the occurrence. So we are left with the evidence of PW 8 but we have to

find out whether the said evidence can be accepted. Before we proceed to consider whether the evidence of PW 8 can be accepted, we cannot but refer to the evidence of PW 7, the witness who was present at the time of inquest. PW 7 in his evidence stated that when the Sub-Inspector of Police came to the village, no male member of the family of PW 3 was present and that only ladies were present. Keeping this evidence in mind, when we look at the evidence of PW 8, Pradip Kumar, we find it difficult to accept his evidence that he could have seen the occurrence from the place where he claimed to have been standing. According to him, when there was, hulla in the village, he and other witnesses ran to the house, climbed over the roof and he was standing along with the others on the open terrace. According to him, there were periphery walls on four sides. According to PW 8, he saw the occurrence through a hole which was at a height of 7 feet. We are unable to understand as to how PW 8 could have peeped through a hole which was at a height of 7 feet and could see the attack on the deceased. In fact, the evidence of PW 8 is not even corroborated by the evidence of PW 12, wife of the deceased, who has stated in her evidence that when she heard the cries, she reached to the place and found the appellants giving the deceased farsa blows and A-I Ram Swaroop Singh holding his hands. If the evidence of PW 12 is to be accepted, then PW 8 and other witnesses could not have climbed the roof and could not have witnessed the occurrence through the hole which was at a height of 7 feet, since according to PW 12, the occurrence was over, even before she reached the place and the accused persons had left the place. We are also unable to accept the evidence of PW 11 for the same reason which we have given for rejecting the evidence of PW 8 as her evidence is on the same line as that of PW 8. In this background, we have to consider the defence version.

10. In the above background, we can look at the evidence of the defence version. It is not in dispute that Lakshmi Singh, son of A-3 Nagindeo Singh, who was acquitted by the trial Court, also died during the course of same transaction. The defence marked Ext. A, post-mortem certificate issued by PW 1, who conducted autopsy on the dead body of Lakshmi Singh, son of A-3 Nagindeo Singh. The prosecution did not offer any explanation for the death of Lakshmi Singh, son of A-3 Nagindeo Singh though PWs 5, 6 and 12, who were treated hostile, admitted that Lakshmi Singh, son of A-3 Nagindeo Singh, died during the course of same transaction. It is also not the case of the prosecution that Lakshmi Singh, son of A-3 Nagindeo Singh, died at different point of time and at a different place. It is also not in dispute that the complaint, Ext. B, was given by A-3 Nagindeo Singh even by 11.00 a.m. i.e. much earlier to the complaint given by PW 12. When the accused persons have suffered injuries and one of them died, then there was a duty case upon the prosecution to explain the reasons for the injuries and also to explain as to how Lakshmi Singh, son of A-3 Nagindeo Singh, died. There is no explanation from the side of the prosecution. At this stage, it is worthwhile to remember that the prosecution did not even examine the Investigation Officer and that had he been examined, he would have given

evidence as to the materials collected by him to show as to how Lakshmi Singh, son of A-3 Nagindeo Singh, died. The non-examination of the Investigating Officer in the above background is also fatal to the prosecution. It is a settled principle of law that if the witnesses suppress the injuries on the accused, then the Court has to disbelieve the prosecution as it is to be presumed that the witnesses had suppressed the genesis and origin of the case. In the case of Lakshmi Singh and Others Vs. State of Bihar, , the Supreme Court has laid down the rule on the following terms:

In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

- (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case.

11. As the prosecution did not explain the cause of the death of Lakshmi Singh, son of A-3 Nagindeo Singh, who died during the course of same transaction, this Court cannot but hold that the witnesses had been giving false evidence on material points and therefore, their evidence is not acceptable. We, therefore, set aside the order of conviction and sentence imposed upon the appellants and acquit them. It is reported that the appellants are on bail. They, are discharged from their bail bonds. The appeal is allowed.