
(2006) 03 JH CK 0079
In the Jharkhand High Court
Case No : Criminal Appeal No. 202 of 1990

Ram Dhani Chamar and Others	Vs	APPELLANT
The State of Bihar (now Jharkhand)		RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 149, 302, 304, 323

Citation : (2006) 03 JH CK 0079

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

Bench : Division Bench

Advocate : V.P. Singh, for the Appellant; A.K. Jha, Assistant Public Prosecutor, for the Respondent

Judgement

1. The appellants 1 to 6 were arrayed as A1, A4, A2, A3 and A5 before the Sessions Judge along with A6, Upendra Chamar who was arrayed as A6. The trial Judge framed charges against the appellants under Sections 147, 302 read with 149 and 323 I.P.C. After the trial, on the evidence adduced, while the trial Judge acquitted A6, Upendra Chamar, found the accused-appellants alone guilty and sentenced each one of them to imprisonment for life u/s 302 read with 149 I.P.C. He also found them guilty under Sections 323 and 147 I.P.C. for which no separate sentence was awarded. The present appeal is against the said conviction and sentence.

2. In the judgment the appellants will be referred as A1, A4, A2, A3 and A5 in the order they were arrayed before the Sessions Judge for the sake of convenience and Upendra Chamar who was acquitted will be referred as A6.

3. P.W.3, Dhaneshwar Rain is the son of the deceased, Keshri Mochi. There was a dispute pending between the accused group and the deceased group as regards collection of mahua flowers from a tree. The Assistant Settlement Officer, Nawadih Camp stated to have informed P.W.3 that they have half share in the mahua tree. On the date of incident the deceased along with his son, P.W.3 and

another son Muneshwar Ram went near the tree to collect mahua flower. At that time the accused objected to the deceased collecting the flowers. The words were exchanged between the parties and thereafter quarrel ensued. At the time of quarrel the first accused beat the deceased on the head with a lathi, When Muneshwar Ram intervened he was also beaten and that P.W.3 suffered injury when he was beaten by the 2nd accused, Faguni Chamar. Keshri Mochi was removed to the hospital but at the hospital he died. On the same day at noon P.W.3 lodged fardbeyan, Ext.I at the police station which was recorded by Sri Kedar Nath Singh, S.I. The investigation in the crime was taken up by the officer After the inquest was over the dead body was sent to the hospital and requisition was given to the doctor for conducting autopsy.

4. On receipt of the requisition, P.W.11(A), Dr. Kamta Prasad Singh conducted autopsy on the dead body of Keshri Mochi and he found the following injuries:-

1. Bruise on the right side of the back 4"x 1".
2. Three bruises on the left side of the back (a) 6" x 1", (b) 2" x 1", (c) 4" x 1".
3. One bruise on the back of the right ear 2" x 1".
4. One abrasion 2" x 1/2" on the back of right hand.

The doctor issued Ext.4, the post mortem certificate with his opinion that the death is on account of fracture to the head. In the meantime, P.W.3, Dhaneshwar Ram who suffered injury during the course of the same transaction was examined by P.W.10, Dr. Muneshwar Prasad Singh and he found the following injuries on the person of P.W.3 :-

1. Lacerated wound 1-1/2" x 1/2" x skin deep over posterior part of head. Margin irregular.
2. Bruise over upper and posterior part of the left side of the chest.
3. Swelling and tenderness over lower part of the right leg.
4. Swelling over right forearm on its lower part. All injuries were simple caused by hard and blunt weapon may be lathi.

The doctor issued Ext.3/1, the injury report. He also examined Muneshwar Ram and found two swellings and tenderness on the bone of the left index finger and also over the whole left side of the buttock as well as scratch over right side of the middle of the nose and bruise over both sides of the back of chest. Ext.3/2 is the injury report issued by the doctor. During the course of the investigation the first accused, Ramdhani Chamar was arrested by the investigating officer and he was sent to the hospital as he had injuries on his person. On being referred, P.W.10, Dr. Muneshwar Prasad Singh examined Ramdhani Chamar and he found the following injuries on his persons:-

1. One small lacerated wound 1" x 1/4" x skin deep over upper and mid part of the head.

2. Lacerated wound 1/2" x 1/4x skin deep over posterior part of right forearm near the right elbow joint.

3. Swelling and tenderness over the right whole thumb.

4. Scratch over the base of the right side of the nose.

The doctor issued Ext.3, the injury report.

5. After completion of investigation a final report was filed against the accused and when questioned u/s 313 Cr.P.C., the accused denied the incriminating circumstances appearing against them.

6. The learned Counsel appearing for the appellants submits that in view of the evidence of P.W.5 the case of the prosecution that the deceased suffered a blow at the hands of the first accused cannot be accepted and that the deceased was in fact attacked by his own sons, namely, Dhaneshwar Ram, P.W.3 and Muneshwar Ram, who was not examined. In support of the said plea he drew our attention to the evidence of P.W.5 which we have perused. We have also heard Mr. A.K. Jha, learned counsel appearing for the State.

7. There can be no dispute that Keshri Mochi died on account of homicidal violence. The doctor, P.W.I 1A who conducted autopsy and issued Ext.4, the post mortem certificate, in his evidence stated that the deceased, Keshri Mochi died on account of fracture to the head suffered by him. The medical evidence shows that Keshri Mochi died on account of homicidal violence.

8. The prosecution before the trial court examined three witnesses as witness to the occurrence. They are P.W.2, Laxman Ram; P.W.3, Dhaneshwar Ram and P.W.5, Mewa Singh and of them P.W.3 also suffered injury at the time of occurrence. He was also examined by the doctor, P.W.10 for the injury on his person. The injury report is Ext.3/1. On going through the injury reports we find no infirmity in their evidence to hold that the deceased did suffer injury at the hands of the first accused. The contention of the counsel for the appellants that the deceased suffered injury at the hands of his sons is to be stated only to be rejected. The evidence of P.W.5 does not indicate that the deceased, Keshri Mohi was attacked by his sons. On the contrary, it could be seen that on account of a mistake committed while recording the evidence of P.W.5, the punctuation, namely, the "full stop" was wrongly placed at a particular stage making it appear that the deceased, Keshri Mochi was attacked by his sons and there is no justification for the Court to hold that the deceased was attacked and murdered by his sons on the basis of the mistake in the punctuation. A reading of the evidence of P.Ws3 and 5 makes it clear that the deceased was in fact attacked by the first accused on the head with a lathi on account of which the deceased suffered injury on the head and died. We, therefore, reject the contention of the learned counsel that the deceased was attacked by his sons.

9. The final question that is to be decided by us is that the nature of the offence committed by the first accused. The facts which we have extracted above clearly

show that there was dispute between the accused and the deceased as regards the enjoyment of mahua tree and on the date of incident when the deceased accompanied by his two sons went to the place to collect mahua flowers the accused objected leading to a quarrel and scuffle. It could be seen from the evidence that during the said quarrel the first accused inflicted injury on the head of the deceased. At this stage a useful reference can be made to the evidence of P.W.10 who examined the first accused, Ramdhani Chamar. According to him he was referred to him by the Police officer and on examination he found injuries on his person which he noted in Ext.3, the injury report. It, therefore, shows that the first accused also suffered injury during the same transaction. The external injury noted on the deceased which was bruise and the injuries noted on the first accused indicate that there was not only a quarrel but also a scuffle during which the first accused and the deceased must have fallen down and rolled on the ground. It is therefore, clear that the deceased was inflicted a blow by the first accused during a quarrel without any premeditation and that he did not act in an unusual manner. Once we come to the conclusion that the occurrence had taken place due to quarrel the conviction of the appellants u/s 302 read with 149 I.P.C. cannot be upheld. We, therefore, acquit all the accused of the charge u/s 302 read with 149 I.P.C. We also acquit all the accused u/s 147 I.P.C. as there was no unlawful assembly with any common object. Though we have acquitted the accused we cannot but convict the first accused u/s 304 Part II of the I.P.C. since he has caused injury on the deceased, Keshri Mochi during quarrel leading to his death. We accordingly convict the first accused u/s 304 Part II of the I.P.C. for which he is sentenced to suffer R.I. for a period of five years. As there was no common object each accused is liable to be convicted for his individual overt-act. It is the evidence of P.W.3 that he was attacked by Faguni Chamar as could be seen from the fardbeyan, Ext.1 given by him immediately after the incident. Though he had come out with a different version in Court by implicating all the accused that he was attacked by all the accused, in his earlier statement, Ext.1 he only implicated Ramdhani Chamar as the person who caused injury on his person. We, therefore, while giving benefit of doubt to accused 3,4 and 5 find the 2nd accused, Faguni Chamar alone guilty u/s 323 I.P.C. for causing injury to P.W.3. The trial court did not award any separate sentence against A2 and, therefore, we do not also impose any sentence on Faguni Chamar.

10. In the result, the conviction of the appellants u/s 302 read with Section 149 and consequent sentence imposed upon them are set aside. The first accused, Ramdhani Chamar is convicted u/s 304 Part II of the I.P.C. for which he is directed to suffer R.I. for five years. The conviction of 2nd accused, Faguni Chamar u/s 323 I.P.C. for causing simple injury to P.W.3 is maintained while Prasad Chamar(A3); Bigan Chamar(A4) and Nageshwar Chamar @ Naeshwar Ram(A5) are acquitted of all the charges.

11. With the above modification in conviction and sentence the appeal is partly allowed. The first accused, Ramdhani Chamar will surrender to the bail bonds.

The Sessions Judge will take steps to commit him to prison. If he has already suffered sentence of five years, the same will be set off.