
(2006) 03 JH CK 0025

In the Jharkhand High Court

Case No : Criminal Appeal No. 524 of 1990 (P) and 26 of 1991 (P)

Rama Rawani and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34, 341

Citation : (2006) 2 JCR 367

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

Bench : Division Bench

Advocate : Anjana Prakash, Anuj Prakash and Ashish Jha, for the Appellant; I.N. Gupta, APP, for the Respondent

Final Decision : Allowed

Judgement

1. The appellants in Cr. Appeal No. 524 of 1990 were arrayed as A-3, A-4 and A-5 and the appellant in Cr. Appeal No. 26 of 1991 were arrayed as A-1 and A-2 in Sessions Case No. 51 of 1989/ 14 of 1990 before the Additional Sessions Judge, Deoghar. They were tried u/s 341/34 of the Indian Penal Code as well as u/s 302/34 of the Indian Penal Code, on the allegation that they after trespassing into the Cane Crushing Unit of the deceased, caused injuries to Saroj Rawani (deceased) by assaulting him with knife, as a result of which the said Saroj Rawani died at Government hospital, Deoghar, where he was removed after the incident.

2. The trial judge, while finding the appellants guilty, as charged, sentenced each one of them to imprisonment for life u/s 302/34 of the Indian Penal Code. but did not impose any separate sentence against them u/s 341/34 of the Indian Penal Code. Against the said judgment of conviction and order of sentence, the appellants have preferred the present appeals.

3. In the judgment, the appellants in Cr. Appeal No. 26 of 1991 and the appellants in Cr. Appeal No. 524 of 1990 will be referred to as A-1 to A-5, in the

same order, as they were arrayed before the learned Sessions Judge, and the appeals are disposed of by the following common judgment, as they arise out of the single Sessions Case.

4. The facts, necessary to dispose of the appeal, can be briefly summarized as follows:

PW-1, Chakru Rawani, and PW-5, Suresh Rawani, are the cousin brothers of the deceased Saroj Rawani. PW-9, Nageshwar Rawani is the brother of the deceased. They were residents of Kolhabad village within the jurisdiction of Jasidih police station. It is the case of the prosecution that A-1, Pawan Rawani, A-2, Teklal alias Kanhaiya Rawani, A-4, Biro Rawani and A-5, Bal Kishun Rawani picked up a quarrel with PW-9, when he refused to serve cane juice and later went away after threatening the deceased and the witnesses. At about 7.30. p.m. when the deceased was returning to cane crushing unit from his house with the food, on the way, the accused accosted him and thereafter inflicted the injuries on his stomach, back, head and other parts of the body. On hearing cries, PW-1, PW-5 and PW-9 rushed from the sugar cane unit and found the deceased lying on the ground with face downwards. PW-1, who had a torchlight, lighted it on and found accused 1 to 5 running away from the place. The deceased in a feeble voice informed the witnesses that he was inflicted with the injuries by the accused. The injured Saroj Rawani was, thereafter, placed on a cot and taken to Jasidih Police Station, where PW-11 sent him to the hospital at Jasidih after preparing an injury report. A written report, Ext. 2, was given by PW-9, Nageshwar Rawani, which was registered as a crime and thereafter investigation was taken up by PW-11, Madhusudan Singh. PW-11 took up the investigation, went to the Jasidih Hospital, where he was informed that the injured Saroj Rawani had been referred to Deoghar hospital. PW-11 went to Deoghar hospital on 28.2.1989 and recorded the statement, given by the deceased, Saroj Rawani. He thereafter proceeded to the scene of occurrence at Kolhabad and prepared the seizure list, Ext.5, for the articles, which he seized at the place. On getting information at 2.00 P.M. that Saroj Rawani breathed his last at the hospital, went to the hospital and conducted the inquest by preparing inquest report, Ext. 6. He, thereafter, sent his requisition to the doctor for conducting autopsy.

5. On receipt of the requisition, PW-10, Dr. Narendra Kumar Singh, conducted autopsy on the dead body of Saroj Rawani and he found the following injuries:

1. On removal of a stitched wound on right side of tempero-perital region

The wound was incised measuring 3 " x ?" x skin and muscle deep.

2. Four stitched wounds on the back. On removal of stitches dimension from ?" to 1" long and ?" to ?" wide into muscle deep. And nature of the wound was incised.

3. Stitched wound left hypochondrium.

On removal of stitched wound the wound was incised. Peritoneum and gut was

peeping through the right paramedial region and abdomen.

The doctor issued Ext. 3, the post mortem certificate, with his opinion that the death is on account of shock and severe haemorrhage due to the injuries suffered by the deceased.

6. After the completion of investigation, the final report was filed against the appellants, who, when questioned u/s 313 of the Code of Criminal Procedure, on the incriminating circumstances, appearing against them, denied all the circumstances. The accused-appellants examined four witnesses as DWs-1 to 4. DWs-1, 3 and 4 were examined and through them Ext. B was marked to show that A-3, Rama Rawani, was there at Public Health Engineering Department, at the time of occurrence and DW-2 was examined to show that when he reached the scene of occurrence, on hearing cries, he found the deceased in unconscious stage and that no names were given as regard the assailant by the deceased.

7. The learned Counsel appearing for the appellants submits that Ext. 2, the Fardbayan, is a suspicious document and the said document must have been prepared by the police officials and it would not have been given by PW-9, as claimed by the prosecution. The counsel further submits that the deceased could not have been conscious and could not have given a statement to the witnesses, as claimed by them, and further it is submitted that the witnesses could not have been in a position to identify any of the accused, as admittedly, the occurrence took place in dark night

8. We have heard Mr. I.N. Gupta, learned A.P.P., for the State, on the above contention.

9. There is no dispute that Saroj Rawani died on account of the injuries, suffered by him, and that those injuries are homicidal in nature. The doctor, PW-10, conducted autopsy and gave evidence in court. He also marked Ext. 3, the post mortem certificate, issued by him, wherein, he has noted the external injuries as well as the internal injuries found by him on the dead body at the time of post mortem. He had given evidence to the effect that the deceased Saroj Rawani could have died on account on shock and haemorrhage and that the injuries are sufficient in the ordinary course of nature to cause death.

10. We, therefore, hold that Saroj Rawani died on account of homicidal violence.

11. The prosecution, in order to establish that the deceased Saroj Rawani was inflicted with injuries by the accused-appellants, examined PWs 1, 5 and 9 as witness to the occurrence. According to the prosecution, there was a quarrel between PW-9 and the accused-appellants, A-1 to A-5, when cane juice was refused to be served on them. It is the further case of the prosecution that the accused, who were refused to be served the cane juice, left the place after threatening the witnesses. The evidence is to the effect that at 7.30 P.M. when PWs-1, 5 and 9 were in the sugar cane unit, they heard cries, ran out of the unit and found the deceased Saroj Rawani lying on the ground with face downwards.

It is the further case of the witnesses that PW-1 with help of the torch light, which he had in his hand, found all the five accused running away from the place and that the deceased told them that he was attacked by the accused.

12. We have now to consider whether we could accept the evidence of PWs-1, 5 and 9 to uphold the conviction of the appellants.

13. It is the evidence of PWs-1, 2 and 9 that immediately after the occurrence, the deceased was placed on a cot and taken to Jasidih Police station. PW-11, the Sub Inspector of Police, who conducted inquest, in his evidence stated that deceased was brought to the police station and he found injuries on Saroj Rawani and, therefore, he referred him to the hospital after preparing the injury report. He has further stated, even in examination-in-chief, that a written report was handed over to him by PW-9 on the basis of which a crime was registered. Though, PW-11 has stated that a written report was given to him by PW-9, PW-9 came out with a different version by stating that he and the witnesses after reaching the police station, stayed there for about half an hour, and that he was nervous. He has also stated that he gave an oral statement and the same was recorded by PW-11 in which he affixed his signature. Though, on the face of it, the contradiction may look minor for a court to reject it, we find a suspicious feature in the Fardbayan, Ext. 2 and the printed First Information Report, Ext. 4, which was prepared on the basis of Ext. 2. In Ext. 2, the Fardbayan, it is mentioned that at 7.30 P.M., A-3, Rama Rawani and A-4, Biro Rawani, surrounded and caught him (deceased) and Pawan Rawani, A-1, and Teklal, A-2, assaulted with Chhura on stomach, back and head and injured him. There is no mention of the name of A-5, Bal Kishun Rawani. In the earlier part of the Fardbayan it is mentioned that the injured was surrounded by the accused, namely, A-1, Pawan Rawani, A-5, Bal Kishun Rawani, A-2, Teklal Rawani and A-4, Biro Rawani. The name of A-3, Rama Rawani, is not found mention.

14. When we look at Ext. 4, the F.I.R., the name of A-3, Rama Rawani, is not found written in the column, meant for writing the names of the accused. PW-9 in his evidence has stated that he gave an application to the Chief Judicial Magistrate for adding the name of A-3, Rama Rawani. The said application stands marked as Ext. A, which we have perused. Though the said application bear the date 28.2.1989, it could be seen from the original Ext. A that it must have been given only on 3.3.1989, since it was received by the Magistrate on that day and that he passed an order, permitting the officer to add A-3, Rama Rawani, as one of the accused in the crime. Even on the date of incident, when PW-9 gave a statement to the police officer (whether oral or written) then it escapes ones comprehension as to why the name of the third accused Rama Rawani was not mentioned in the column, meant to mention the names of the accused. Apart from this, there is yet another surrounding suspicious feature, which contradicts Ext. 2. PW-1 stated that they stayed at the Police Station for about half an hour and PW-9 did not give any statement before the police. If a written statement had been taken to the police station by PW-9, which was handed over to PW-11,

then PW-1 could not have given such an answer in his cross-examination that PW-9 did not give any statement at the police station. It is also doubtful for us to accept the evidence of PW-11 that a written report was given by PW-9 at the police station. It could be seen from the materials, placed before us, that the deceased suffered serious injuries and was taken to the police station thereafter. If that be the case, we cannot understand as to how PW-9 at the place of occurrence wrote a written statement regarding the occurrence and prepared it so that it could be handed over to the police officer. It is not in dispute that all the witnesses are rustic villagers and it is highly doubtful whether before reaching the scene of occurrence, any of them had sufficient time or materials to prepare a written report, for it to be handed over to the Investigating Officer at the police station. In fact, at the risk of the repetition, we have to say that this evidence of PW-11 is not corroborated by PW-9. But, on the contrary, it is contradicted not only by PW-9 but also by PW-1, who came out with a definite answer that no statement was given by PW-9 at the police station. It is also worthwhile to remember at this stage that the prosecution for the reasons, best known, did not even mark the injury report, said to have been prepared by PW-11, when he referred the injured Saroj Rawani and had it been produced, the court would have had an idea as to what transpired at the police station before Saroj Rawani was referred to the hospital. We, therefore, find that Ext. 2 is a suspicious document and hence, we do not place any reliance on the said document.

15. We now come to the evidence of the witnesses that the deceased made statement to the witnesses, implicating the accused. The evidence of PWs-1, 5 and 9 is to the effect that on hearing cries, they went to the scene of occurrence, found the deceased lying face downwards and that the deceased informed them that he was attacked by the accused. This evidence of PWs-1, 5 and 9 is not supported by the medical evidence since PW-10, the doctor, who conducted autopsy, came out with a version that on receiving the injuries, the deceased could not have been in a position to talk. We also find it difficult to accept the evidence of the witnesses that the deceased gave a statement after the incident. If the deceased had given a statement, implicating the accused with the crime, then the said fact would have been mentioned in the Fard-beyan, Ext. 2, alleged to have been given by PW-9. There is no whisper in the complaint, Ext. 2, that the deceased made a statement to any of the witnesses. We, therefore, do not attach much importance to the evidence of the witnesses, who came out with such version in court.

16. We also find it difficult to accept the prosecution case that the appellants were seen running from the scene of occurrence with the aid of torch light, which the PW-1 allegedly had in his hand. Admittedly, it was a dark night. The evidence of PW-1 is to the effect that on hearing the cries they ran towards the place and found five persons running away and that he was the only man, who was having a torch. According to him, after reaching the place, he found the deceased on the ground and that the deceased informed them that he was attacked by the

accused. He has deposed that after the deceased informed them about the attack by the accused, he lighted the torch and found the accused running from the place, which is highly improbable, since the accused could not have waited at the place for them to be identified till the deceased made statement, implicating them with the crime. This evidence of PW-1 is at variance with the evidence of PW-9, who, in his evidence, stated that he and the other two witnesses, PWs-1 and 5, ran together and lit the torch on the way. According to him, they saw all the five accused running north to the place of occurrence, which means that even before the deceased gave statement, the appellants were seen by PW-9, which is contradictory to the evidence of PW-1. Even according to the witnesses, the distance between the place, where they were standing and from where the accused were seen running is about 100 ft. and we find it difficult to accept the prosecution version that with the aid of three-cell torch they could have seen the accused, more so, when there is contradiction as to the point of time, when the witnesses saw them.

17. We, therefore, do not place reliance on the evidence of all the eye witnesses and give the benefit of doubt to the accused-appellants. The appeals are allowed and the judgment and order of conviction and sentence is set aside. It is reported that all the appellants are on bail; they are discharged from the liabilities of bail bonds.