
(2008) 05 JH CK 0015
In the Jharkhand High Court

Ratia Uraon and Another

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2008) 3 JCR 184

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Both the appellants have preferred this appeal against the judgment and order dated 30.9.1997 and 3.10.1997 passed by Additional Sessions Judge, Sahibganj in S.T. No. 790 of 1993 by which the appellant No. 1 Ratia Uraon has been convicted u/s 302 of the Indian Penal Code and appellant No. 2 Bandhu Uraon has been convicted u/s 302/34 of the Indian Penal Code and both the appellants sentenced to undergo R.I. for life.

2. Brief facts leading to this appeal are that PW 1, the informant has left his house for pole factory in early morning at 5 a.m. on 2.6.1990. However, at about 6.30 a.m. his wife PW 2 arrived at the pole factory with lunch to inform him that she saw some villagers planning something against his father who has gone to the field to tend bullocks. The informant anticipating danger came out of the pole factory to see that the appellants alongwith seven others were going towards the place of occurrence, field of Bhojna Muriari. The informant having seen this, rushed towards the place of occurrence. In the meantime the appellants started assaulting his father. Further stated he saw appellant Ratia cutting the neck of his father with garasa while the appellant Bandhu was holding him. PWs 1 and 2 thereafter rushed towards the field crying but the appellants (led away. In the meantime on their alarms other witnesses PWs 3, 4, 5, 7, family members of the deceased arrived who also saw the appellants fleeing from the place of.

occurrence. According to the informant this occurrence took place because of a land dispute going on between the deceased and appellant Ratia and Bandhu.

3. The matter was reported to Jir-wabari O.P. of Boriyo police station immediately on which the police arrived at the place of occurrence by 8.30 hours. The statement of the informant was recorded by S.I. S.K. Dutta on the place of occurrence who started investigating the case after sending the fardbeyan to Boriyo police station immediately thereafter. The police submitted charge-sheet against eight persons including the appellants. They were charged on 17th December, 1993 u/s 302/34 of the Indian Penal Code. The appellant Ratia was further charged u/s 302 of the Indian Penal Code separately. The trial Court after trial found and held these two appellants guilty u/s 302 of the Indian Penal Code and Section 302/34 of the Indian Penal Code and sentenced them as aforesaid, acquitting Shanti Oraon, Chamru Oraon, Hiria Devi, Chulbulia Oraon and Birsra Oraon.

4. The present appeal has been preferred by both the appellants on the ground that the learned trial Court has committed a mistake by relying upon the informant and PW 7 who could not prove the charges beyond all reasonable doubts. It was asserted that in absence of any eye witness worth credit, the prosecution case should have been disbelieved. According to the appellants, there is material contradiction in the evidence of PW 1, 5, 7 on the point of assault as well as time of occurrence, and in absence of the I.O. the defence has been prejudiced. The learned amicus curiae Sri P.A.S. Pati further submitted that the FIR was lodged immediately after the occurrence though the police station was situated at a distance of 32 k.m. It was further pointed out that the FIR was sent to the Court of CJM after two days. According to learned amicus curiae, the I.O. has not investigated the case properly and submitted the charge-sheet in haste without having got the blood collected from the place of occurrence and examined by forensic experts. According to Sri Pati, statement of PW 1 in absence of any positive corroboration did not deserve to be relied.

5. We have gone through the lower Court records and the evidence available on the records. Undisputedly the occurrence took place in the morning of 2nd June, 1990 and the autopsy has been conducted at Sahibganj in the evening of 2nd June, 1990. The post mortem report Ext. 2 does not mention anything regarding the rigor-mortis on the dead body. It further does not mention probable time elapsed since death. According to this report, the larynx and trachea was cut through resulting in death. With such injuries most likely blood must have fallen heavily at the place of occurrence. The inquest report prepared by the I.O. immediately after recording of the fardbeyan has been brought on record by formal witness as Ext. 6 (Carbon copy of the inquest report) but no witness has been examined in its support.

6. From perusal of the inquest report, we find that no mention has been made regarding seizure of the blood soaked soil from the place of occurrence. The case diary brought on record as Ext. 7 and 8 does not mention anything regarding

collection of the blood stained soil. As such from the post-mortem report the probable time of the death of the deceased cannot be ascertained.

7. We further went through the statement of prosecution witnesses. PW 2 Fula Devi, wife of the informant, PW 3 Durga Oraon, cousin of the informant, PW 4 Jitni Uraon sister of the informant who have been tendered by the prosecution. PW 5 wife of the deceased, PW 7 daughter of the deceased are hearsay witness of the occurrence. PWs 8 and 9 are formal witnesses who have proved the writings of the I.O. on Exts. 7 and 8.

8. PWs 5 and 7 both mother and sister of the informant asserted in their examination-in-chief that on the alarm raised by the informant they came out of the house to see the occurrence. PW 5 has asserted that when she came out of the house she saw appellant Ratia Oraon fleeing from the place of occurrence. PW 7 was informed about the occurrence by PWs 1 and 2. PW 5 has stated during cross-examination that at about 7 a.m. PW 1 came raising alarm that her husband has been killed. According to her version the place of occurrence was a field situated at about 200 yards from her house and the pole factory was situated at about 1/2 k.m. PW 2 Fula Devi wife of the informant who have earlier asserted that she was eye-witness of the occurrence, was tendered by the prosecution witness. PW 1 has supported his statements made during fardbeyan before police. According to him, his statement was recorded by the I.O. at place of occurrence itself. In cross-examination this witness has admitted that place of occurrence was situated at about 200 steps from the pole factory. At the same breath, he admitted in para 3 that the place of occurrence was situated at about 1/2 k.m. from the pole factory. He further asserted that he used to work in pole factory from 8 a.m. to 6 p.m. However, on the date of the occurrence he has reached the pole factory at 5 a.m. itself. According to him PW 2 arrived at the pole factory at 7 a.m. and disclosed her suspicion. He further admitted in para 6 that he could see from the pole factory itself the place of occurrence whether the accused persons were standing. According to him when he saw the appellants for the first time they were at a distance of 10 steps. He reached near the body of his father within one minute to find him senseless after which he went back to the village raising alarm.

9. In such view of the facts where the informant has contradicted himself regarding the manner he could learn about the occurrence from his wife PW 2 his statement required to be scrutinized more strictly and cautiously. Our view is based upon the admitted facts that earlier one Ramjatan Oraon was killed in which the informant was suspected to have taken part. Therefore we find that the prosecution could produce only PW 1 as the sole eye witness of the occurrence. The contradictory version regarding the distance of the place of occurrence from the house of the informant as well as from the pole factory, admittedly 1/2 k.m. from both places create reasonable doubts whether the informant may be the eye-witness of the occurrence? With holding PW 2 as the eye-witness of the occurrence by the prosecution further creates doubt on the

veracity of this statement of PW 1. The conduct of PW 1 when he did not raise any alarm while the appellants were assaulting his father in another circumstances which should have been considered by the trial Court. If the alarm was raised by this witness could it attracted the attention of PWs 3, 4, 5 and 7 at a distance of about 1/2 k.m. from the place of occurrence. These witnesses have been tendered by the prosecution. PW 5 has only admitted that she saw the appellant Ratia fleeing from the place of occurrence.

10. We have further considered the non-examination of the I.O. which has resulted in prejudice to the defence. It could have brought on the record, the statements of PWs recorded by him u/s 161, Cr PC and the materials found at the P.O. at 8,30 a.m. by him. The I.O. having conducted the investigation, preparing inquest report, sending dead body for postmortem examination immediately as well as the recovery of the weapon of assault from Ratia Uraon remained not proved in his absence.

11. The appellants have been named by PWs 1, 5 and 7 to have participated in committing the offence. However, PWs 2, 3 and 4 have been tendered by the prosecution perhaps not supporting the prosecution. PWs 5 and 7 appear to have been tutored witnesses as they have gone out of the house on halla raised by PW 1 admittedly when he reached in the village.

12. Having considered all these facts and circumstances, we find that there are material contradictions in the statement of PWs 1 and 5 as regards the manner of occurrence in which the appellants are said to have caused death of the deceased in the morning of 2.6.1990 in the field of Bhojna Muriari. Accordingly, we find that the prosecution has not been able to prove the charges beyond all reasonable doubts against the appellants for causing death of the deceased Budhao Uraon in the manner alleged by the prosecution.

13. In the result, we find and hold that the present appeal has got merit in it and deserves to be allowed. Accordingly, this appeal is allowed.

14. The judgment of conviction passed by the trial Court against the appellants is hereby set aside and the appellants are acquitted of the charge levelled against them. Since the appellants are in jail custody, they, are directed to be set free forthwith, if not wanted in any other case.