

(2006) 04 JH CK 0043

In the Jharkhand High Court

Case No : Criminal Appeal No. 306 of 1994 (P)

Rawan Rawani and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 307

Citation : (2006) CriLJ 3919 : (2006) 2 JLJR 633 : (2006) 2 JCR 479 : (2006) 2 AIRJharR 700

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Lakhan Chandra Roy, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—This appeal is directed against the judgment dated 5.9.1994 passed by the Sessions Judge, Deoghar in Sessions Case No. 42 of 1985 whereby and whereunder the learned Sessions Judge convicted the appellant Nos. 1 to 7, for committing the offence u/s 307/149 of the Indian Penal Code and has sentenced them to undergo R.I. for a period of 7 years each. So far as appellant No. 8 Rukmini Devi is concerned, the learned Session Judge though found her guilty for the offence under Sections 307/149, IPC but released her on probation of good conduct by executing a bond of Rs. 10,000/-with two sureties of the like amount each for keeping peace for a period of two years considering the fact that she was a woman and that there was no allegation against her that she caused injuries to any of the informant parties.

2. The prosecution case, as alleged in the FIR, lodged by Moti Rawani on 24.6.1982, in short is that on 23.6.1982 at about 7.00 p.m. one Dr. Banerjee had gone to the house of Bhagirath Rawani for the treatment of his son. The informant, his son Tripurari Rawani and Ojha Rawani also went to the house of Bhagirath Rawani and requested that some persons wanted to assault them and,

therefore, the dispute may be settled. At that time Rawan Rawani, Bishan Rawani, Domar Rawani, Pawo Rawani, Kartik Rawani, Bahadur Rawani, Hero Rawani, Gonar Rawani and the wife of Hero Rawani, came there variously armed with bhujali, sword and lathi etc. and then suddenly Rawan Rawani attacked the informant's son Tripurari Rawani and assaulted by means of bhujcdi on this hand due to which his right wrist was almost chopped off. Thereafter, all the named accused persons also assaulted the informant, his son Ojha Rawani and his wife Bindua Devi. It is said that to save the informant party the villagers, Basuki Rawani (PW 2) and Kishan Rawani (PW 3} wanted to intervene but they were also assaulted by the accused persons by means of lathi and sword. The informant alleged that he received injuries on his person due to assault made by Domar Rawani and Bishan Rawani and Pabo Rawani. It is said that due to the assault, his son Tripurari Rawani fled away towards his house and Ojha Rawani fell down there. On hullo, raised by the informant and others, the villagers Nakul Rawani, Ketka Rawani, Jaleshwar Rawani, Tilo Rawani etc. came there and then the accused persons fled away from the P.O. The motive behind the occurrence was that the daughter of Gonar Rawani was married to Tripurari Rawani but she was not being sent to her in-laws, place and because of the said dispute the said occurrence took place.

3. In order to establish the charges, altogether 13 prosecution witnesses were examined on behalf of the prosecution. On behalf of the defence also two DWs were examined in order to show that there was free fight between both the parties and the appellants also received injuries in course of that occurrence but the said injuries on their persons were not explained by the prosecution.

4. The learned trial Court, on the basis of the evidence on record, convicted and sentenced the appellants as stated in earlier paragraphs.

5. Mr. Roy, learned counsel appearing for the appellants has submitted that the conviction and sentence passed by the trial Court was bad because there were vital contradictions in the evidence of the PWs with regard to the manner of assault, weapons used by them and also on the point of the nature of the injuries received by the prosecution witnesses. It has further been submitted that since Investigating Officer was not examined on behalf of the prosecution and as such, the appellants were greatly prejudiced, since attention of the Investigating Officer regarding the contradictions in the evidence of the PWs could not be drawn.

6. In order to test the submissions of the learned counsel for the appellants, it is necessary to scrutinize the evidence adduced by the prosecution.

PW 1 is Hargouri Rawani. He has stated that the son of Dr. Banerjee had come to the house of Bhagirath Rawani to see a patient, where Moti Rawani, Tripurari Rawani and Ojha Rawani reached there and requested the doctor to amicably settle the dispute between them and the accused persons. He further Stated that at that time all the accused persons reached there variously armed and then the

accused Rawan Rawani (appellant No. 1) gave a bhujali blow on the right wrist of Tripurari Rawani (PW 4) due to which right wrist of Tripurari was almost chopped off. He also stated that Rawan Rawani also assaulted Tripurari by means of bhujali on his head and shoulder. This witness has further stated that Bishan Rawani (appellant No. 2) assaulted the informant by means of sword and the appellant Nos. 3 and 6 Bahadur and Domar assaulted by means of bhujali. It has further alleged that appellant No. 4 Pawo Rawani and appellant No. 5 Kartik Rawani assaulted the informant's son Ojha Rawani (PW 5). Appellant No. 1 Rawan Rawani also assaulted Basuki Rawani by means of bhujali whereas appellant No. 7 Hero Rawani assaulted the wife of the informant Moti Rawani. This witness in paragraph 8 of his evidence has stated about the motive of the occurrence. According to him, the occurrence took place because the daughter of Gonar Rawani was married with the injured Tripurari Rawani and Gonar Rawani Was not sending his daughter to her in-laws, place and, therefore, they requested to convene a panchayati for the same. In paragraph 11 of his evidence this witness has given a vivid description of the manner of occurrence and also the details of the part played by each of the accused. No vital contradiction has been pointed out by the learned counsel for the appellant so far as the evidence of this PW 1 is concerned.

7. PW 2 Basuki Rawani and PW 3 Kishan Rawani are full brothers and they are the sons of Bhagirath Rawani. They have fully supported the case of the prosecution. However, it was argued that PW 3 has only given the name of three persons, who took part in the assault.

8. PW 4 is the injured Tripurari Rawani. He has stated that at the relevant day of the occurrence, he along with his father Moti Rawani, brother Ojha Rawani, mother Bindiya Devi had gone to the house of Bhagirath Rawani where the doctor Banerjee had come. He further stated that the appellants arrived there and thereafter, appellant No. 1 Rawan Rawani gave bhujali blow on his right hand due. to which his right wrist was chopped off. He further stated that appellant Rawan Rawani gave another blow of bhujali on his head due to which he fell down and became unconscious and, thereafter he could not say as to who assaulted whom.

9. PW 5 is Ojha Rawani and PW 6 the wife of the informant Bindiya Devi have fully supported the prosecution case and have given the description of the occurrence specifically stating about the part played by the accused persons in assaulting the informant party. No vital contradiction of any importance has been pointed out so as to make the evidence of these two witnesses unreliable. As a matter of fact these two witnesses are found to be wholly reliable.

10. PW 7 is the informant himself. He has fully supported the case of the prosecution and his own statement made in the FIR. He has specifically stated that Rawan Rawani gave bhujali blow upon the right hand of Tripurari. According to him Rawan Rawani gave another blow on the "kanpatti" (temple) of Tripurari and when he protested then Bahadur Rawani gave bhujali blow upon his left

hand. He has further stated that Kartik, Pabo and Domar also assaulted him by means of bhujali upon his shoulder. Bishan Rawani assaulted Ojha by means of sword and when Basuki Rawani wanted to intervene then he was also assaulted by Rawan Rawani. He also stated that when his wife wanted to save, Hero and Gonar assaulted her by means of lathi. He has further stated that the wife of Hero caught the hairs of this wife and pulled her down.

11. PW 8 is Dani Rawani son of Bhagirath Rawani at whose house Doctor Banerjee has come to see his elder brother where the informant and other persons arrived and where the alleged occurrence took place. In paragraph-3 of his evidence he has given vivid description of the occurrence. He has named the accused Rawan, Bishan, Domar, Kartik, Hero and Rukmini and has stated as to who and with which weapons they assaulted the other PWs. He has fully corroborated the statements of the other PWs.

12. PW 9 is Lila Devi, who is the wife of PW 2 Basuki Rawani. Her evidence is not of much value as at the relevant time she was inside her house.

13. PW 3 is Dr. Ajay Banerjee. He has stated that on 23.6.1994 about 5.30 p.m. he had gone to the village Shitalwa for the treatment of his servant Haldhar, who was ill. There he was informed that a dispute was going on in between the accused persons and the informant party with regard to "bidai" of the daughter of the accused persons. This witness stated that at that time his father was an M.L.A. This witness has further stated that some persons entered into the house of Bhagirath Rawani being armed with dagger, sword etc. and somebody in the meantime gave sword blow on the hand of Tripurari causing cut of his right hand from wrist. He also saw Ojha, Basuki and Moti who also received injuries. This witness has not specifically stated the name of the accused persons.

14. PW 12 is the doctor, who examined the injuries on the persons of the injured and found the following injuries on the body of the injuries :-

Ojha Rawani

- (1) Incised injury-between left shoulder and neck 8" x 2" x 3" (upto muscle deep);
- (2) Incised injury-on Pena of left ear 1" x 1/4" x 1/4";
- (3) Incised injury-on occipital region of scalp 3" x 1/2" x bone deep;
- (4) Lacerated injury-on right elbow 1" x 1/2" x 1/2";
- (5) Bruise-on left knee 1" x 1".

Bindiya Devi

- (1) Lacerated injury-on the bridge of the nose 1/2" x 1/2" x 1/2";
- (2) Lacerated injury-on left temporal region of scalp 1/2" x 1/2" x 1/2".

Basuki Rawani

- (1) Incised injury with fracture of 4th metacarpal on right hand 6" x 1/2" muscle deep;
- (2) Lacerated injury on thumb finger of the left hand 1/2" x 1/2" x 1/2";
- (3) Bruise on the back of left chest 6" x 1".

Kishan Rawani

- (1) Lacerated injury on occipital region of scalp 1" x 1/2" x 1/2";
- (2) Bruise on left shoulder 5" x 1".

Moti Rawani

- (1) Incised injury curved having a flap on left shoulders 10" x 1" x 1";
- (2) Incised injury on the back of right chest 6" x 1" x 1";
- (3) Incised injury on the upper left fore-arm 1" x 1/2" x bone deep;
- (4) Incised injury on right shoulder 4" x 1/4" x skin deep.

Tripurari Rawani

- (1) Incised injury extending from lateral angle of left eye to the base on the sternomastoid of the left side of the neck 10" x 2" x bone deep.
- (2) Incised injury entering the base on right wrist but a piece of skin was as impact 5" x 2-1/2" x 3".

15. On being questioned, the learned counsel for the appellant, neither could point out a single vital contradiction in the evidence of the prosecution witnesses nor he could convince the Court, as to how the defence was prejudiced due to non-examination of the Investigating Officer.

16. From the above discussions of the evidence of the PWs, I find that there is no reason at all to disbelieve the evidence of PWs 3, 4, 5, 6 and 7, who are injured witnesses and they did receive injuries on their persons at the hands of the accused/appellants and the injuries received by them were fully corroborated by the medical evidence.

17. Considering the manner of occurrence, the nature of the weapons used by the appellants for injuries on the persons of the informant parties, in my view, the learned trial Court was fully justified in holding that such blows were given with no other intention than to commit the murder of the injured persons. The learned trial Court has rightly convicted and sentenced all the accused persons for committing the offence under Sections 307/149, IPC. I find no infirmity in the judgment of the trial Court.

18. Accordingly, by affirming the conviction and sentence passed by the learned

Sessions Judge, this appeal is dismissed. The appellant Nos. 1 to 7, are on bail and, as such, their bail bonds are hereby cancelled and they are directed to be taken into custody forthwith for serving out the sentences.