
(2003) 02 JH CK 0088

In the Jharkhand High Court

Case No : Criminal Appeal No. 300 of 1993 (R)

Rawan Tuddu and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 302, 323

Citation : (2003) 2 JCR 541

Hon'ble Judges : Vinod Kumar Gupta, J; Lakshman Uraon, J

Bench : Division Bench

Advocate : Kaushal Kumar Jha, for the Appellant; C.J. Sahay, APP, for the Respondent

Final Decision : Allowed

Judgement

Vishnudeo Narayan, J.—This appeal has been directed by the appellants named above against the judgment, dated 30.4.1993 passed in Sessions, Case No. 146/86/156/89 by Sri Sita, Ram Pandey, 3rd Addl. Sessions Judge, Dumka (Santhal Pargana) whereby and whereunder they were found guilty for the offence punishable under Sections 302/149, 323/149 and 147 IPC and they were convicted and sentenced to undergo RI for life for the offence under Sections 302/149, IPC and RI for two months for the offence u/s 147, IPC and RI for one month for the offence under Sections 323/149, IPC. However, the sentences were ordered to, run concurrently. All the appellants were acquitted of the charges under Sections 307/149, 325/149 and 447, IPC giving benefit of doubt by the learned Court below.

2. The prosecution case has arisen on the basis of the Fardbeyan (Ext, 1) of PW 3, Suna Tuddu recorded on 31.8.1985. at 15.30 hours in the State Dispensary, Barharwa by SI Kamla Pati Singh, O/C Ranga PS regarding the occurrence which is said to have taken place on that very day at 11.00 hours in Village Kushum Pokhar Bahiar in which the murder of Ramai Tuddu was committed and PW 3, the informant, PW 11, Dula Tuddu, PW 1, Khirish Kisku, PW 2 Bhushan Tuddu were

assaulted. The case was instituted on the basis of the Fardbeyan aforesaid on that very day at 22.00 hours as per formal FIR (Ext. 2) which was sent to the Court empowered to take cognizance on 1.9.1985 by special messenger but the same was received in the Court on 5.9.1985.

3. The prosecution case, in brief, is that all the appellants aforesaid along with six. unknown persons resident of Village Nageshwar Bag, RS Rajmahal, District Sahibganj forming an unlawful assembly variously armed with lethal weapons, such as, Bhala, Khanti, Bow, Arrow and Lathi were sowing paddy seedlings in the field of the informant and PW 3, the informant along with his father PW 11, Dula Tuddu protested to them from sowing padddy seedling in the said field. It is alleged that on their protest all the appellants aforesaid started assaulting the informant and his father by Lathi, Khanti and Bhala and PW 11. Dula Tuddu, the father of the informant, sustained fracture injuries on his left arm. The prosecution case further is that PW 1, Khirish Kisku, PW 2, Bhushan Tuddu @ Lughru Tuddu, PW 4, Dubai Soren, PW 10, Madhua Murmu and Ramai Tuddu, the deceased of this case, came there to rescue the informant and his father arid the appellants also assaulted them by Lathi and Khanti which caused fracture on the right hand of PW 1. Khirish Kisku and fracture of leg of PW 2, Bhushan Tuddu and they also committed the murder of Ramai Tuddu in the said field. It is also alleged that several persons of the village came there on the alarms raised at the place of occurrence by the informant and others and they have witnessed the occurrence.

4. The appellants have pleaded not guilty to the charges levelled against them and they claim themselves to be innocent and to have committed no offence and that they have been falsely implicated in this case out of enmity existing and alive. It has also been contended that the appellants were in cultivating possession of the land in question and they were sowing paddy seedlings in the said field and the informant along with others forming an unlawful assembly has assaulted the appellants causing injuries on their person and for that a case has also been filed against the informant and others regarding the said occurrence.

5. The prosecution has, in all, examined nineteen witnesses to substantiate the charges levelled against the appellants. PW 3, Suna Tuddu is the informant of this case, PW 1, Khirish Kisku, PW 2, Bhushan Tuddu and PW 11, Dula Tuddu are said to be the eye witnesses of this, occurrence and claim to have sustained injuries in the course of the occurrence caused on their person by the appellants PW 4, Dubai Tuddu, PW 10, Madhua Murmu, PW 13. Pairo Hembran are also said to be the eye witnesses of the occurrence. PW 16, Bhagwat Murmu is not an eye witness of the occurrence but he has, deposed regarding the fact that the informant was in possession of the land in which the appellants were sowing paddy seedlings at the time of the occurrence. PWs 5, 6, 7, 8, 9, 12, 14, 15, 17 and 18 have been tendered in this case by the prosecution. PW 19 is a formal witness who has proved the Fardbeyan (Ext. 1) of PW 3, the informant and the formal FIR (Ext. 2) in this case. The IO of this case and the doctor, who has

conducted the post mortem examination on the dead body of Ramai Tuddu, have not been examined In this case by the prosecution for the reasons best known to it.

6. No oral evidence has, however, been adduced on behalf of the defence but the certified copies of the FIR and the Fardbeyan of the case instituted by the appellant No. 1, Rawan Tuddu regarding the occurrence of that very day lodged against the informant and others, has been brought on the record which is Ext. B in this case. Ext. C is the certified copy of the order sheet of TR Case No. 400 of 1988 arising on the basis of the FIR (Ext. B). Ext. A is the certified copy of the order of Cr Misc No. 122/85 in a proceeding u/s 144, Cr PC between the parties in respect of the land in question which is the place of occurrence of this case and the said proceeding was dropped in view of the fact that a partition suit between the parties in respect of the said land was sub judice before the competent Court.

7. The learned Court below in view of the evidence oral and documentary came to the finding of the guilt of the appellant and convicted and sentenced them as stated above.

8. Assailing the impugned judgment it has been submitted by the learned counsel for the appellants that the learned Court below did not meticulously consider the evidence on the record, and has gravely erred in coming to the finding of the guilt of the appellants. It has also been submitted that the informant and his witnesses forming an unlawful assembly had come to the PO field which was admittedly in cultivating possession of appellant Rawan Tuddu and the informant side is the aggressor and they wanted to take forceful possession of the land and for that they had assaulted the appellants causing injuries on their person for which appellant Rawan Tuddu had filed a case against the informant and others. It has also been submitted that the said field was in cultivating possession of the appellant who were sowing paddy seedlings in the said field at the time of the occurrence and a suit for partition in respect of the said land was sub judice between the parties before a competent Civil Court and, as such, there was unity of title and possession of the parties over the said land and that was the reason the appellants were acquitted u/s 447 of the IPC by the learned Court below. It has also been submitted that there is no material on the record brought by the prosecution to give an inkling of the fact that the informant or his father was in cultivating possession of the said land. It has been submitted by the learned counsel for the appellants that the learned Court below did not consider this aspect of the matter in coming to the finding of the guilt of the appellants and he was simply, swayed due to the fact of the, death of Ramai Tuddu as a result of the injuries caused to his person by the prosecution party itself in the course of the occurrence. It. has also, been submitted that the learned Court below did not give any specific finding in the impugned judgment regarding the fact as to which of the party was in actual physical cultivating possession of the land In question and without coming to the said finding the

learned Court below has wrongly and illegally found the appellants guilty and in this view of the matter the Impugned judgment is unsustainable. It has also been contended that no Independent person has taken oath for the prosecution and the witnesses who had taken oath for the prosecution are all the agnates of the informant and they are inimical, interested and partisan witnesses. The further contention of the learned counsel for the appellants is that the prosecution has deliberately suppressed the true version of the occurrence and has also not disclosed the injury on the person of some of the appellants sustained in the occurrence and the non-examination of the IO and doctor in this case for the prosecution have greatly prejudiced the appellants as they have been debarred of elucidating facts in their cross-examination showing their innocence as well as to prove the fact that which of the appellants has given the fatal blow on Ramai Tuddu, and lastly question of forming an unlawful assembly does not arise, at all in this case by the appellants in view pf the finding of the learned Court below regarding the joint possession of the parties over the land aforesaid. It has been submitted that there is an unexplained delay as to why the fardbeyan along with the formal FIR of this case had reached to the Court after five days which gives an inkling of the fact that the prosecution version is concocted one as a result of after thought and it is anti dated and anti timed and as such it suffers with legal infirmity.

9. Learned APP has submitted that the informant was in cultivating possession of the land and the appellants were illegally and forcibly sowing, the paddy seedlings in the said field which was protested to by the informant and due to that the appellants assaulted, the informant and others including Ramai Tuddu, who died at the place pf occurrence and It was appellant Rawan Tuddu who had assaulted Ramai Tuddu causing his death. The learned APP has further submitted that the ocular witnesses of the occurrence has, materially corroborated the prosecution case in their evidence on oath regarding the manner of the occurrence and the learned Court below has rightly found the appellants guilty for the offences under Sections 302/149, 323/149 and 147 IPC and has convicted and sentenced them and there is also no illegality in the impugned judgment.

10. It will admit of no doubt in view of the two versions of the occurrences as per Ext. 1 read with Ext. B that an occurrence has definitely taken place in the field at Kushum Pokhar Bahiar on 31.5.1988 at 11.00 hours between the informant and others on one hand and the appellants on the other hand and in the said occurrence Ramai Tuddu was assaulted, who sustained injuries on his person as a result of which he died at the spot. I will discuss regarding the manner of the occurrence at an appropriate place later on. Let us now first advert to the land on which as per the prosecution case the appellants were sowing paddy seedlings. PW 11, Dula Tuddu, the father of PW 3, Suna Tuddu, the informant has deposed in para 3 of his evidence that the said land stands recorded in the survey parcha in the name of Sonua. Suphal, Basua and Sardar. He has further deposed that parcha may also be in the name of Ramai and Bhushan. PW 2, in

para 5 of his evidence, has deposed that the said land stands recorded in the settlement parcha in the name of Bhushan and one Ramai (not the deceased of this case). He has further deposed very specifically that the said Ramai is the ancestor of appellant Rawan Tuddu. In the concluding portion of his evidence he has further deposed that the said land is in the joint possession of both the parties. PW 3, the informant does not depose in his evidence on oath as to how and in what manner the land in question stands recorded in the survey parcha. However, he has deposed in para 6 of his evidence that the said land was in his cultivating possession and all the witnesses who have taken oath in this case belong to one and the same family. PW 1 in para 3, PW 13 in para 3, PW 4 in para 7 besides PW 16, a resident of different village have deposed that the said land was in possession of the informant since long. The evidence of PW 1, 13, 4 and 16 regarding the exclusive possession of the informant over the land aforesaid stands materially contradicted by PW 2 as per his evidence appearing in para 6 which he has categorically stated that both the parties to this case were in joint cultivating possession. In view of the evidence aforesaid of PW 2 it cannot be definitely said that the informant or his uncle Ramai Tuddu, the deceased of this case, were in exclusive cultivating possession of the said land. There is no denying the fact that a suit for partition between the parties of this case is sub judice before the competent Civil Court at the relevant time of the occurrence. For this the evidence of PW 2 in para 6, PW 3 in para 12 and PW 13 in para 7 is referred to. It is also no denying the fact that the proceeding u/s 144 and also u/s 145, Cr PC in respect of the land in question had also taken place, between the parties prior to the institution of the partition suit. Ext. A also corroborates the existence of a proceeding u/s 144, Cr PC between the parties in respect of the land in question during the pendency of the said title suit before the Court of Deputy Collector, Sahebganj bearing Title Partition Suit No. 17 of 1978 including the land which is the place of occurrence in this case and the said proceeding was dropped on 30.7.1985 i.e. prior to the occurrence. The learned Court below in the impugned judgment has clearly stated that no document has been produced to show that the PO land was in exclusive possession of the informant or his witnesses and in view of the said finding charge u/s 447, IPC against the appellants was found not to be proved. Here I will refer the averments made in the Fardbeyan (Ext. 1) of PW 3, the informant. It has been averred in the fardbeyan aforesaid that all the appellants were sowing paddy seedlings in the PO land which was protested to by the informant and his father PW 11. Dula Tuddu. PW 1 in para 1, PW 2 in para 2, PW 13 in para 9 have deposed that the appellants were ploughing the PO land sowing paddy seedlings therein. PW 13 has further deposed that several bundles of paddy seedlings were also kept in the said field for sowing. It therefore appears from the evidence aforesaid read with the averments made in the Fardbeyan that at the time of the occurrence it was the appellants who were cultivating the land and sowing the paddy seedlings in the said field. PW 3, the informant, has deposed that at the time of the occurrence he was ploughing the PO land along with his father besides Ramai Tuddu, the deceased and Luchru Tuddu and others all the

appellants came there and they assaulted the informant and others including Ramai Tuddu causing his death, PW 11, the father of the informant, in para 5 of his evidence has deposed that at the time of the occurrence the appellants were not sowing paddy seedlings in the said field., However, he does not whisper in his evidence on oath that it was informant and his camp men who were ploughing the land or sowing paddy seedlings there. The evidence of PW 3 and PW 11 is against the prosecution case as averred in the Fardbeyan (Ext. 1) regarding sowing of the paddy seedlings in the PO land by the appellants. It therefore appears from the evidence on the record referred to above that the informant or his father or Ramai, the deceased of this case, were in fact not in actual physical cultivating possession of the PO land. Therefore, in the facts and circumstances of this case and in view of the evidence on the record it appears crystal clear that the appellants were not the aggressor in this case rather it was the informant and his camp men who were the aggressor in this case. In this scenario the occurrence of assault took place between the parties which is evident as per the Fardbeyan of the informant (Ext. 1) and the Fardbeyan of the appellant Rawan Tuddu (Ext. B).

11. Let us now come to the manner of the occurrence. According to the Fardbeyan (Ext. 1) on protest by the informant and his father they were assaulted by the appellants and the arm of PW 11 was fractured as a result of the assault and the informant also sustained injuries on his person. It is also alleged in the Fardbeyan that PW 1. Khirish Kisku, PW 2, Bhushan Tuddu @ Lughru Tuddu, PW 4, Dubai Soren and PW 10, Madhua Murmu along with Ramai Tuddu (the deceased of this case) came there and they were assaulted by Lathi and Khanti by the appellants as a result of which PW 1 sustained fracture of his right hand and PW 2 also sustained fracture of his leg and Ramai Tuddu died of the assault perpetrated on him in the field by the appellants. It is also pertinent to mention here that there is omnibus allegation against all the appellants in mounting assault on Ramai Tuddu, the deceased of this case, besides, PWs 3, 11, 1 and 2. It has not been specifically stated as to which of the appellants has assaulted which of the injured or the deceased of this case. PW 1 has deposed that he went to the PO land seeing quarrel there. He has further deposed that all the appellants assaulted Ramai Tuddu and appellant Rawan, Tuddu gave- a blow by lathi on the head of Ramai Tuddu, who fell down and died. He has further, deposed that appellant Rawan Tuddu assaulted him (this witness) causing fracture injury on his right arm and also on his head as a result of which he became unconscious. PW 1, therefore, does not whisper regarding assault on PW 3, PW 1 and PW 2. PW 2 has deposed that appellant Rawan Tuddu assaulted Ramai Tuddu by Sabbal and Lathi on his head. His evidence is further to the effect that appellants Rawan Tuddu, Charan Soren and Sarjug Tuddu assaulted on his face and leg as a result of which his tooth were broken and there was fracture on his left hand. It is pertinent to mention here that he does not state in his evidence as to which of the appellants has assaulted him on his left hand causing fracture. He has also deposed that PW 1 and PW 11 were also assaulted

by the appellants in the said occurrence. However, he does not whisper about PW 1, Khirish Kisku having been assaulted by the appellant in the said occurrence. PW 3 has deposed that appellant Rawan Tuddu assaulted on the head of Ramai Tuddu by Lathi causing injury on the head and Ramai Tuddu died there. He has further deposed that the appellants Rawan Tuddu and Bhushan Tuddu assaulted him on the head and shoulder and rest of all the appellants assaulted Lughru Tuddu, Dula Tuddu, Kistu and Bhushan and there were fracture injury on the arm of PW 11, Dula Tuddu and Kistu aforesaid. PW 11, Dula Tuddu has deposed that all the appellants have assaulted Ramai Tuddu by Lathi. He has also deposed that they were also assaulting Lughru Tuddu and others and when he intervened in the occurrence he was also assaulted by them as a result of which there was fracture of his right hand and Ramai Tuddu died as a result of assault by all the appellants. The evidence of PW 11 that he was assaulted first when he made protest to the appellant is inconsistent with the averments made in the Fardbeyan. Furthermore, according to PWs 3, 1 and 2 only appellant Rawan Tuddu had assaulted Ramai Tuddu but according to this witness all the appellants had assaulted Ramai Tuddu. PW 4 has deposed that he did not go to the place of occurrence as per his testimony appearing in para 3 of his evidence. PW 10, Madhua Murmu has deposed regarding the manner of occurrence, which is quite inconsistent in respect thereof as averred in the Fardbeyan of the informant. According to him the informant party was cultivating the land and the appellant had protested and in the course of occurrence appellant Rawan Tuddu gave a Lathi blow on the head of Ramai Tuddu who fell down and died and all the appellants thereafter assaulted him when he had intervened in the occurrence and injuries have been caused on the left hand, leg, head and other places of his body. The evidence of PW 10 regarding the assault by appellant Rawan Tuddu alone to Ramai materially stands contradicted which I have already referred to above. PW 13 has deposed that all the appellants had assaulted on the head of Ramai Tuddu and all the appellants remained assaulting Ramai Tuddu till his death in the PO field. He has also deposed that the appellant had also assaulted PW 11, Dula Tuddu, Bhushan Tuddu and Khirish Kisku by Lathi. However, PW 13 does not whisper regarding any assault by the appellants on the informant and PW 10, Madhua Murmu. All these alleged injured witnesses, i.e., PW 3, the informant, PW 11, Dula Tuddu, PW 1, Khirish Kisku, PW 2, Bhushan Tuddu and PW 10 Madhua Murmu claimed to have been medically treated in the hospital but surprisingly enough there is no injury report regarding their injuries on the record. Even the doctor who has examined and treated them has not taken oath in this case. Therefore, there is a big question mark regarding the aforesaid witnesses to have sustained injuries in the occurrence as alleged. Furthermore, the testimony of the aforesaid witnesses are Inconsistent and also at variance with the manner of the occurrence as alleged in the Fardbeyan (Ext. 1) which creates reasonable doubt in their testimony as ocular witness of the occurrence though their presence as per counter version (Ext. B) of the case at the place of occurrence cannot be questioned. It is pertinent to mention here that all the aforesaid witnesses are of one family and they are agnates and PW 3 in para 10

of his testimony has admitted the said fact. No independent witness of the vicinity of the place of occurrence has taken oath in this case. Ext. B is the Fardbeyan and formal FIR of the case lodged by appellant Rawan Tuddu against the informant and his camp men, which depicts the counter version of the occurrence. PW 1 in para 4, PW 2 in para 6, PW 3 in para 13, PW 13 in para 8 have deposed that appellant Rawan Tuddu has not filed any case regarding that very occurrence against the informant and others and they have also not sent any injuries on the person of any of the appellants whereas PW 4 has deposed that he figures as an accused in the case filed by the appellant Rawan Tuddu regarding the occurrence of that very day but he has not sent any injuries on any of the appellants and he has also not seen them in the hospital. Similar is the evidence of PW 10 and PW 11.

It therefore appears that the witnesses are suppressing the material facts regarding the occurrence in question and they have not come before the Court with clean hands. The doctor conducting the post mortem examination has also not taken oath in this case nor post mortem examination report has been brought on the record by the prosecution to establish the fact that as to how and as a result of what injury Ramai Tuddu has died. There is also nothing on the record due to non-examination of the IO as to whether Ramai Tuddu had sustained injuries in the PO field and he has died at the spot. It is also not on the record as to how many injuries the deceased had sustained on his person. The appellants definitely stand prejudiced by the non-examination of the IO and the doctor conducting the post mortem examination of the deceased of this case as they have been debarred from elucidating facts in their cross examination showing their innocence in the facts and circumstances of this case. The evidence on the record as discussed above does not conclusively lead to the fact that the informant was in actual physical cultivating possession of the PO land. The averment in the fardbeyan shows that It was the appellants who were sowing paddy seedlings in the PO land and some of the prosecution witnesses had admitted the said fact in their evidence on oath. PW 2 has deposed that the PO land was in Joint possession of both the parties of this case. Therefore, the appellants cannot be said to be the aggressors In the facts and circumstances of this case because he was cultivating the land and sowing paddy seedlings in the PO land at the alleged time of occurrence and it was the informant and his father who had made protest and therefore it is the informant and his camp men appear to be the aggressors in the facts and circumstances of this case, specially when a title partition suit in respect thereof was sub judice before the competent Court between the parties on the date of the occurrence. Now a pertinent question arises as to whether the appellants had exceeded their right of private defence in assaulting Ramai Tuddu causing his death in the occurrence. There is inconsistent evidence on the record regarding the manner of assault on Ramai Tuddu. According to some witnesses all the appellants have assaulted Ramai Tuddu and according to some prosecution witness only Rawan Tuddu assaulted the deceased by lathi on his head. I have already discussed above in details

about the evidence on the record in respect thereof. The post mortem report is not on the record to give an inkling of the fact to show the nature of the injury on Ramai Tuddu as well as the number of injuries on his dead body and also that which of the injuries caused by which of the appellants is the cause of his death. Taking the line of least resistance in spite of the conflicting evidence of the prosecution witnesses regarding the factum of assault on the deceased, appellant Rawan Tuddu is said to have assaulted the deceased on his head by lathi which is definitely not a lethal weapon. Therefore, it cannot be said that the appellants have exceeded the right of private defence of property in assaulting Ramai Tuddu by lathi in the occurrence in question specially when as per evidence on the record they were cultivating the land and sowing paddy seedling in the PO field. And last but not the least the fardbeyan and FIR was received in the Court empowered to take cognizance sifter five days of the alleged recording of the fardbeyan and no explanation in respect thereof is forthcoming on the record by the prosecution. The FIR and Fardbeyan has to be sent to the Court forthwith. This unexplained delay in respect of the FIR and the fardbeyan before the Court casts a cloud of suspicion to the very credibility of the prosecution case and in the absence of any corroborative evidence such as inquest report and post mortem report of the deceased of this case it can be said that the fardbeyan may be anti dated. Therefore, the prosecution case suffers with inherent infirmity, suppression of the material facts regarding the manner of the occurrence and besides that, the evidence on the record, is a replete with inherent inconsistencies and material contradictions which speak volumes against the authenticity of the prosecution case. The learned Court below did not meticulously consider the evidence on the record in proper perspective and has gravely erred in coming to the finding of the guilt of the appellants.

12. After careful consideration of the facts and circumstances of this case and materials on the record, the impugned judgment suffers with illegality and is unsustainable which requires an Interference herein. There is merit in the appeal and it succeeds. The appeal is hereby allowed. All the appellants are not found guilty to the charges levelled against them and they are accordingly acquitted and they are discharged from the liability of their bail bonds.

Lakshman Uraon, J.

13. I agree.