
(2015) 11 JH CK 0027

In the Jharkhand High Court

Case No : Criminal Appeal (DB) Nos. 330, 676, 852, 947, 980, 995, 996, 1021, 1029, 1032 and 1300 of 2006

Saligram Oraon and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 323

Citation : (2015) 11 JH CK 0027

Hon'ble Judges : Rakesh Ranjan Prasad and Pramath Patnaik, JJ.

Bench : Division Bench

Advocate : Rajesh Kumar, Rajesh Kr. Mahatha, V.K. Tiwari and Ravi Kerketta, Advocates, for the Appellant; Kaushik Sarkhel, Mukesh Kumar, Nagmani Tiwari, Krishna Shankar, G.S. Prasad, V.K. Tiwary, Nikki Sinha, Hardeo Pd. Singh, Ashok Kumar, Laxmi Murmu and Suraj Verma, A.P.Ps., for the Respondent

Judgement

1. All the aforesaid eleven appeals arising out of the same judgment of conviction and order of sentence, were heard together and are being disposed of by this common judgment.

2. The aforesaid 15 appellants alongwith 13 others, were put on trial for committing murder of Sanicharo Devi as well as Ram Keshwar Bhagat. The Court, while acquitting the other 13 persons, found the aforesaid 15 appellants guilty for committing murder of both the persons and convicted them for the offence punishable under Sections 302/34 of the Indian Penal Code and also under Sections 307/149 and 148 of the Indian Penal Code, for making an attempt to commit murder of the informant Sita Ram Bhagat (PW-5) by its judgment dated 25/02/2006 and sentenced each of them to undergo imprisonment for life for the offence punishable under Section 302/34 IPC and further to undergo imprisonment for seven years and one year respectively for the offence punishable under Sections 307/149 and 148 IPC vide its order dated 28/02/2006. However, all the sentences were ordered to run concurrently.

3. The case of the prosecution, as has been made out in the Fardbeyan, is that on 09/03/2003 at about 09.30 P.M, the appellant Gandur Oraon, came to the house of the informant Sita Ram Bhagat (PW-5) and asked him to come to "Akhara" (a place for meeting) for a meeting convened by the Villagers to take decision as to whether Witchcraft is being played by his mother. The informant refused to attend the said meeting on the plea that it has become quite dark. On the next day, i.e. 10/03/2003, the villagers assembled at "Akhara" early in the morning at about 04.00 A.M. At about 06.00 A.M the appellant Gandur Oraon again came and took the informant (PW-5), his mother Sanicharo Devi (deceased), his elder brother Ram Keshwar Bhagat (Deceased), his wife Fulmati Devi (PW-2), niece Anita Kumari (PW-4) and Sunita Kumari (PW-3) to "Akhara" where they did find several persons being assemble over the "Akhara". As soon as they reached over there the appellant Jai Prakash Oraon told them that they, by playing Witchcraft, are instrumental in killing Somra Oraon and Budhain Devi, who, in fact, had died upon consuming liquor in excess. By saying so, all these appellants and also the persons, who have been acquitted, started assaulting them. Of them the appellants Saligram Oraon, Bahya Oraon @ Baiya Oraon, Bandey Oraon, Bandhu Bhagat, Dhuri Oraon were having Sword, Tabla, Tabla, Balua and Tangi respectively and others were holding Lathi, Danda and Dhelphorwa etc. The accused persons started assaulting them, in course of which the appellants Saligram Oraon and Bandhu Bhagat inflicted "Sword" and "Balua" blows upon Sanicharo Devi as well as Ram Keshwar Bhagat as a result of which they died. Appellant Jai Prakash Oraon did assault the informant with Lathi. However, the informant ran away in order to save himself.

Thus, it has been alleged that the accused persons, by accusing the informant and his family members of playing Witchcraft and also on account of the fact that the appellant Mahavir Bhagat and Bandhu Bhagat were inimical to the family of the informant, committed murder of Sanicharo Devi and Ram Keshwar Bhagat.

On the same day, i.e. on 10/03/2003 at about 10 "O" Clock information was received at Senha Police Station that two persons have been killed in the Village Mentgarha. The said information was entered into the station diary. Thereupon, the Officer-in-Charge of Senha Police Station alongwith the police personnels including Sri Maheshwar Pd. Ranjan, Sub-inspector of Police-Investigating Officer (PW-6) came to the village where murder had taken place. There the Officer-in-Charge recorded the fardbeyan of the informant Sita Ram Bhagat, on the basis of which a first information report was lodged and the Investigating Officer (PW-6) took up the investigation, during which he held inquest on the dead bodies of the deceased and prepared inquest report of the deceased Sanicharo Devi and Ram Keshwar Bhagat as Ext.-1 and Ext.-1/1 respectively. The I.O also seized earth smeared with blood from both the places of occurrence under Exts.-2 and 2/1. Seizure of the weapons also seems to have been effected and, thereby, those weapons were seized under Ext.-3.

4. Thereupon, the I.O sent the dead bodies of the deceased Sanicharo Devi and

Ram Keshwar Bhagat for Post Mortem examination, which was conducted by Dr. A.N. Kashyap (PW-7). Upon holding autopsy on the dead body of the deceased Sanicharo Devi, the Doctor did find the following external injuries:-

"External Injuries.

(i) Incised vertical wound 12" x 2" x 1 1/2" on forehead at right outer Cantus cutting right frontal bone and brain matter.

(ii) Incised vertical wound 1" medial to injury No. 1 measuring 6"x1/2" x bone deep.

(iii) Incised wound transverse 8"x3"x6" extending from left angle of mandible to middle of back of neck with blood smear cutting left carotid vessels left Sterno mastoid muscle and left sub-occipital muscles and dust on face and leg were found present.

The Doctor issued Post Mortem examination report (Ext.-4) with an opinion that the death was caused due to shock and hemorrhage on account of the injury Nos. 1 and 3 caused by sharp cutting weapon such as Tangi and Sword."

5. The Doctor, upon holding autopsy on the dead body of the deceased Ram Keshwar Bhagat did find the following injuries:-

"(i) Incised wound 9"x1"x1 1/2" along lower border of lower jaw an inch left side of mid-line to right angle of mandible cutting left carotid vessels, trachea, larynx, right carotid vessels and neck muscles of front of neck, with blood smear on face and front of neck and chest.

(ii) Amputation of left little finger at its root.

(iii) Abrasion 6"x4" on front of left forearm.

(iv) Abrasion 2"x1" on left knee smeared with dust."

The Doctor, issued post mortem examination report (Ext. 4/1) with an opinion that the death was caused due to shock and hemorrhage on account of injury No. 1 caused by sharp cutting heavy weapon, which was sufficient to cause death."

6. One Dr. Jagat Baraik (PW-8) did examine the informant Sita Ram Bhagat on 10/03/2003 and found the following injury on his person:-

"Lacerated bleeding wound on the left side of head size 2"x 1/2" x skin deep caused by hard and blunt substance such as by Danda and Lathi." The nature of injury was found to be simple in nature. The Doctor issued injury report (Ext.5)."

7. Meanwhile, the I.O. recorded the statements of the witnesses. On completion of the investigation, when the charge sheet was submitted against these 15 appellants and 13 other accused persons, the Court took cognizance of the offences, as aforesaid.

8. Upon commitment of the case to the Court of Sessions, all the accused persons were put on trial, during which prosecution examined as many as 8 witnesses. Of them, PW-1 Jhuni Devi, the wife of the deceased Ram Keshwar Bhagat, PW-2 Phulmati Devi, wife of the informant, PW-3 Sarita Kumari, PW-4 Anita Kumari, both daughters of the deceased Ram Keshwar Bhagat and PW-5 the informant Sita Ram Bhagat, did testify that the appellant Gandur Oraon a day before the occurrence did come to their house for calling them to attend a meeting. They refused to attend the meeting. On the next day the appellant Gandur Oraon again came early in the morning at about 06.00 A.M and took them to "Akhara" where they were accused by the appellant Jai Prakash Oraon of causing death of two persons Somra Oraon and Budhain Devi by playing Witchcraft. They took Sanicharo over the "Akhara" and started assaulting her. PW-1 Jhuni Devi is not specific as to who did assault to whom with witch weapon. However, PW-2 Phulmati Devi did depose that it was Bandhu, Prakash, Mahavir, Birsu, Saligram, Bahya and Sukhram, who were holding weapons like Balua, Table, Tangi, Tangi, Sword, Tangi and Tangi respectively, did assault Sanicharo Devi as a result of which she died. She did further depose that the appellants Saligram, Bandhu, Birsu, Mahavir and Prakash did assault the deceased Ram Keshwar Bhagat with Sword, Tabla, Tangi, Tangi and Table respectively as a result of which he also died.

PW-2 did depose that it was Bandhu and Jai Prakash, who did assault the informant with Balua and Tabla.

9. According to PW-3 Sarita Kumari, the appellants Sukhram, Prakash, Saligram, Bandhu, Mahavir, Dhuri, Bahya, Sukhram, Gandur, Birsu and Bandey did assault the deceased Sanicharo Devi with Danda, Tangi, Sword, Balua, Tangi, Tangi, Tabla, Tangi, Tabla, Tangi and Tangi respectively. Further, she did depose that the appellant Bahya Ram Oraon, S/o Lalua Oraon caught hold of Ram Keshwar Bhagat and it was appellant Jaleshwar, who made him to fall on the ground and then appellants Saligram, Bandhu, Manavir, Prakash, Birsu, Dhuri, Bahya, Bandey, Sukhram and Gandur did assault him with Sword, Balua, Tangi, Tangi, Sword, Tangi, Tabla, Tangi, and Tangi respectively as a result of which he died.

According to PW-4 Anita Kumar, when the appellant Gandur brought them to "Akhara", it was appellants Ropa (died during pendency of the appeal) and Sukhram, who did assault the deceased Sanicharo Devi with slap whereas the appellant Saligram cut the deceased Sanicharo. Further, she did depose that it was the appellant Jai Prakash, who did assault the deceased Ram Keshwar with Tangi and the appellant Saligram gave Sword blow upon the deceased Ram Keshwar whereas other did assault him with Lathi, Danda and Dhelphorwa.

10. According to the informant PW-5 Sita Ram Bhagat, it was the appellant Ropa, who did assault the deceased Sanicharo Devi with Lathi, whereas the appellants Saligram, Bandhu, Birsu, Mahavir, Bandey and Bahya Oraon @ Baiya Ram Oraon did assault Sanicharo with Sword, Balua, Tabla, Tangi, Tangi and Tabla, and that the appellant Jaleshwar chased the deceased Ram Keshwar Bhagat and Bhai

Ram, who seems to be other than Bahya Oraon @ Baiya Oraon as well as Ramjit and Kishun caught hold of Ram Keshwar Bhagat and thereupon, the appellants Bandhu, Saligram, Bandey, Bahya, Mahavir, Birsu did assault him with Balua, Sword, Sword, Tangi, Tangi and Tabla respectively.

11. Upon closure of the prosecution case when the appellant were questioned under Section 313 of the Code of Criminal Procedure over the incriminating evidence appearing against them, they denied. Thereupon, the trial court, having placed reliance on the testimonies of the witnesses such PWs-1, 2, 3, 4 and 5, getting corroboration from the medical evidence and also from the objective finding of the Investigating Officer did record the order of conviction and sentence, which is under challenge.

12. Mr. Rajesh Kumar, learned counsel appearing for the appellants Jai Prakash Oraon, Shani Oraon, Jaleshwar Oraon, Ramjit Bhagat, Dhuri Oraon and Mahavir Oraon submits that though they were convicted for the offence punishable under Section 302/34 of the Indian Penal Code upon finding the testimonies of the eyewitnesses to be trustworthy, but the eyewitnesses are not consistent on the point of weapons used by them. Some of them such as appellants Shani Oraon, Ramjit Bhagat, Kishun Oraon and Jaleshwar, as per the evidence of the informant PW-5, have never been alleged to have assaulted any of the deceased though they, as per the evidence of PW-5, did catch hold of the deceased Ram Keshwar Bhagat but that appears to be an after thought as the informant in his fardbeyan, has not stated like that and, therefore, the testimony of the informant PW-5 to the effect, as stated above, is not worth reliable.

So far the appellant Jai Prakash Oraon is concerned, he, according to PW-2, did assault both the deceased with Tabla but according to PWs- 3 & 4, he did assault both the deceased with Tangi and, thereby, variations are there and in that event the testimony of the witness is not worth acceptable and that so far the appellant Dhuri Oraon is concerned, he, as per the evidence of PWs- 3 & 4, did assault both the deceased with Tangi but the version of PW-3 never gets corroboration from any other witnesses and that so far the appellant Mahavir Oraon is concerned, he, according to the witnesses PWs-2, 3 and 5, did assault both the deceased but he has falsely been implicated as there had been land dispute in between the family members of the informant and Mahavir as well as Bandhu Bhagat and that the litigations, which were there in between the parties, had been owned by Mahavir and, thereby, there was no reason on his part to kill the deceased and under the circumstances all the appellants deserve to be acquitted.

13. Mr. Vishal Kumar Tiwary, learned counsel appearing for the appellant Birsu Oraon submits that as per the testimonies of PWs-2 and 3, he did assault the deceased Sanicharo with Tangi, whereas, the deceased Ram Keshwar was assaulted by the appellant Birsu with Tabla and as per the evidence of PW-5, Birsu did also assault both the deceased with Table and, thereby, there appears to be inconsistency in between the evidences of the aforesaid witnesses and, thereby, the testimonies of the witnesses do not inspire confidence to be believed

keeping in view the medical evidences where the Doctor did find three injures on the persons of the deceased Sanicharo Devi whereas only one grievous injury was found on the person of the deceased Ram Keshwar Bhagat.

14. Mr. Rajesh Kumar Mahatha, learned counsel appearing for the appellants Sukhram Oraon and Saligram Oraon did submit that the appellant Sukhram has never been alleged in the FIR to have been holding any dangerous weapon, rather in general term it has been alleged that he, alongwith some others, were holding Lathi, Danda etc., but in course of the evidence PW-3 did depose that he did assault the deceased Sanicharo with Tangi whereas the another deceased Ram Keshwar Bhagat was assaulted with Tabla and that according to PW-2, he did assault the deceased Sanicharo with Danda and Tangi and did assault the deceased Ram Keshwar with Tangi, but the testimonies of PWs-2 and 3, who seem to be at variance, do not find support from the evidence of PW-4 and PW-5, who did not speak a single word against the appellant Sukhram Oraon on the point of assault being made upon the deceased and, thereby, the appellant be acquitted.

Further, it was submitted that so far appellant Saligram Oraon is concerned, he, though has been alleged by the witnesses to have assaulted the deceased with Sword, but it would not have been possible for the witnesses to say as to who did assault the deceased by which weapons when number of the persons allegedly assaulted the deceased and, thereby, the testimonies of the witnesses be considered to be tutored and, hence, the witnesses, in this regard, be not believed.

15. Mr. Ravi Kerketta, learned counsel appearing for the appellant Bandhu Bhagat did submit that the appellant, as per the testimony of PW-2, did assault the deceased Sanicharo with Tabla but according to PWs-3 and 5, appellant Bandhu did assault both the deceased with Balua and, thereby, there appears to be variations on the point of weapons being used by the appellant in assaulting the deceased and, thereby, the testimonies of the witnesses be not believed in view of the evidence of the Doctor, who has categorically deposed that the injuries never seem to have been caused by Balua and, thereby, the appellant be acquitted.

16. As against this, learned APPs appearing for the State submit that admittedly, two persons have been killed and the reason for killing those persons is that all the accused persons were carrying impression that on account of Witchcraft being played by the deceased and the family members, two persons of the village got killed and on account of that the deceased as well as the other family members, who are the eyewitnesses, were brought at "Akhara", where both the deceased were killed by all the accused persons, who were variously armed and the witnesses including the informant PW-5, who appears to be an injured witness, did categorically state about the weapons used by each of the accused persons and, thereby, even if there happen to be some variations on the point of weapon being used by the accused persons, that would not be too significant for

the purpose of placing reliance on the testimonies of the witnesses. In this regard, it was submitted that the Doctor also did find the injuries on the persons of the deceased being caused by sharp cutting weapons and as per the witnesses, all the appellants except one or two, were holding the weapons like Sword, Balua, Tangi and Tabla and, thereby, under the circumstances, it can be said that all the accused persons in furtherance of their common intention did kill the deceased and that where the murder was committed in furtherance of the common intention, it hardly matters as to whether the accused did commit any overt act or not and under the circumstances, even if the accused, who participated in the occurrence, did not commit any overt act in the commission of the offence of the murder of both the persons, they can easily be held guilty with the aid of Section 34 of the Indian Penal Code and, thereby, the impugned judgment never warrants to be interfered with.

17. Having heard learned counsel appearing for the appellants and on perusal of the records, we do find that it is the case of the prosecution that on 09/03/2003 in the night one Gandur Oraon, had come to the house of the informant Sita Ram Bhagat and asked him to come to "Akhara" so that decision be taken over the matter relating to Witchcraft being played by the family members of the informant. The informant (PW-5) refused to come to the "Akhara" on the plea that it was quite dark. On the next day, at early morning villagers got assembled at "Akhara" at 4 "O" Clock. At 6 "O" Clock, the appellant Gandur again came and took the informant and both the deceased including the witnesses PWs-1, 2, 3 and 4 to "Akhara" where the deceased Sanicharo was brought over the "Akhara", where the appellants, as per the witnesses stated above, did assault first Sanicharo with the weapons, which the appellants were holding and, subsequently, Ram Keshwar was assaulted by the appellants with their respective weapons, as a result of which, both the deceased died. Thereupon, as per the evidence of PW-5, he was also assaulted by Jai Prakash but according to PW-2, the informant was assaulted by Jai Prakash and also by Bandhu with Balua. On account of assault being made upon both the deceased Sanicharo and Ram Keshwar, both of them died.

18. Now, the question does arise as to whether the appellants were sharing common intention to commit murder of both the persons or not?

19. It be reiterated that it was appellant Gandur, who took the deceased as well as their family members to "Akhara" so as to have Panchayati in the matter relating to Witchcraft being played by the family members of the informant. As per the witnesses, the villagers had assembled at "Akhara" in the early morning at about 4 "O" Clock for the purpose of having Panchayati in the matter. According to the evidence of PW-5, as has been testified in para-20, the villagers for having Panchayati used to assemble at "Akhara" and that to with respective weapons and under the circumstances if the appellants, who are the resident of the same village came over there with respective weapons, it, in view of the testimony of PW-5, cannot be said to have had come over there with weapons in

furtherance of the common intention to commit murder of the deceased. However, on account of some reason or the other, at "Akhara" both the deceased were assaulted by the appellants with the weapons, which they were holding, detailed discussion of which has already been made herein above which need not to be repeated.

20. On scrutiny of the evidences of the witnesses, it can be said that the witnesses are not consistent on the point of the weapons, used by the appellants except in case of two appellants namely Saligram Oraon and Mahavir Bhagat. As per all the witnesses, appellant Saligram Oraon did assault both the deceased Sanicharo and Ram Keshwar Bhagat with Sword, whereas the appellant Mahavir did assault both the deceased with Tangi. The testimonies of the witnesses with respect to accusation made against the aforesaid two appellants Saligram Oraon and Mahavir Bhagat, get corroboration even from the medical evidences, whereby the Doctor (PW-7) has testified that the injuries found on the persons of the deceased Sanicharo Devi, can be caused by sharp cutting weapon like Sword and Tangi, whereas injury found on the person of the deceased Ram Keshwar Bhagat may be caused by sharp cutting weapon. The Doctor, in his evidence, has ruled out the injuries being caused by Balua as he did not find injury being conical in shape.

21. Under the circumstances, the testimonies of the witnesses to the effect that the appellant Bandhu Bhagat did assault the deceased with Tabla and Balua, do not inspire confidence to be believed.

22. So far the appellants Dhuri Oraon, Birsu Oraon, Bandey Oraon, Jai Prakash Oraon and Sukhram Oraon are concerned, they though, according to the witnesses, did assault the deceased either with Tangi or Tabla, but the witnesses are at variance on the point of weapons, used by the appellants and, thereby, in their cases also witnesses are not believable keeping in view the injuries being found on the persons of the deceased.

23. Coming to the case of the appellants Ramjit Bhagat, Jaleshwar Oraon, Kishun Oraon, Gandur Oraon as well as Shani Oraon they, according to some of the witnesses, did either chase or caught hold of the deceased, but this fact has not been supported by all the witnesses. Moreover, the FIR is also silent on the point and, thereby, testimonies of the witnesses to the aforesaid effect, do not inspire confidence to be believed.

24. Thus, we do find that the trial court did commit illegality in recording the order of conviction for the offence under Section 302/34 of the Indian Penal Code against all the appellants except appellants Mahabir Oraon @ Mahabir Bhagat and Saligram Oraon, who have rightly been convicted for the offence punishable under Sections 302/34 IPC.

Accordingly, the judgment of conviction and order of sentence passed against all the appellants except the appellants Mahabir Oraon @ Mahabir Bhagat and Saligram Oraon, is hereby set aside and they are acquitted of the said charge.

25. Going further in the matter, it be stated that all the appellants have also been convicted under Section 148, 307/149 of the Indian Penal Code for making and attempt on the life of the person of the informant (PW-5), but admittedly, the injury, which was caused to the informant, was simple and, consequently, it was never dangerous to life and that the appellants were never sharing common object and, thereby, the trial court committed illegality in recording the order of conviction under Section 148 and 307/149 of the Indian Penal Code, against all the appellants.

26. However, we do find that it was the appellant Jai Prakash Oraon, (Cr. Appl. No. 947/2006) who, as per the testimony of PW-5 getting corroboration even from the evidence of PW-2, did assault the informant causing injury, though simple in nature, which also gets corroboration from the medical evidence and, thereby, the appellant Jai Prakash Oraon is found guilty for the offence under Section 323 IPC and, accordingly, he is convicted for the said offence and is sentenced to the period already undergone by him.

Accordingly, Cr. Appeal (DB) No. 947 of 2006, filed by him is partly allowed with the aforesaid modification.

27. Thus, impugned judgment of conviction and order of sentence is hereby set aside so far the appellants namely, Shani Oraon, (Cr. Appl. No. 330/2006), Sukhram Oraon, (Cr. Appl. No. 676/2006), Gandur Oraon, Bandey Oraon (Cr. Appl. No. 852/2006), Jaleshwar Oraon (Cr. Appl. No. 980/2006), Ramjit Bhagat (Cr. Appl. No. 996/2006), Kishun Oraon (Cr. Appl. No. 1021/2006), Dhuri Oraon, (Cr. Appl. No. 1029/2006), Bandhu Bhagat (Cr. Appl. No. 1032/2006) and Birsu Oraon @ Birsu Oraon (Cr. Appl. No. 1300/2006), are concerned. Accordingly, the respective appeals, filed by them, is hereby allowed.

Appellant Bandhu Bhagat (Cr. Appl. No. 1032/2006), who is in jail, is directed to be released forthwith if not wanted in any other case.

28. So far the appellants Saligram Oraon (Cr. Appl No. 995/2006) and Mahabir Oraon @ Mahabir Bhagat (Cr. Appl. No. 1300/2006) are concerned, they have rightly been convicted for the offence punishable under Sections 302/34 IPC and, hence, the judgment of conviction and order of sentence, passed against them is hereby affirmed. Consequently, respective appeals, preferred by them is hereby dismissed.