
(2004) 07 JH CK 0023
In the Jharkhand High Court
Case No : Criminal Appeal No. 129 of 1999

Sambhu Singh and Others	Vs	APPELLANT
State of Bihar (Now Jharkhand)		RESPONDENT

Date of Decision : 22-07-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 307, 323, 326, 34

Citation : (2005) CriLJ 1805 : (2005) 3 Crimes 388 : (2004) 4 JCR 131

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : N.K. Sahani and Gauri Devi, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Vishnudeo Narayan, J.—The appeal at the instance of the appellants has been filed against the impugned judgment and order dated 26.3.1999 passed in Sessions Trial No. 186 of 1997 by Shri Vinod Kumar Sinha, 5th Additional Sessions Judge, Giridih hereby and whereunder appellants Bijay Singh and Pradeep Singh were found guilty for the offence punishable u/s 307/34, 324/34, 323/34 and 341 of the Indian Penal Code and they were convicted and sentenced to undergo rigorous imprisonment for seven years, one year, six months and one month respectively for the offences aforesaid and appellant Sambhu Singh was found guilty for the offence under Sections 307/109, 323/34 and 341 of the Indian Penal Code and he was convicted and sentenced to undergo rigorous imprisonment for five years, six months, and one month respectively for the offences aforesaid. The sentences were ordered to run concurrently in respect of the appellants aforesaid. However, appellant Sambhu Singh was not found guilty for the offence under Sections 326/109 and 324/109 of the Indian Penal Code and the other two appellants were also not found guilty for the offence u/s 326/34 of the Indian Penal Code and they were accordingly acquitted in respect thereof.

2. The prosecution case has arisen on the basis of the fardbeyan (Ext. 1) of PW 1 Sita Ram Singh, the informant, and said to be one of the injured persons in this case recorded by SI M.A. Khan of Town Police Station Giridih at Sadar Hospital, Giridih on 23.6.1997 at 00.30 hours regarding the occurrence which is said to have taken place on 22.6.1997 at 20.00 hours in front of the house of the informant situate in village-Sirodih, Police Station-Giridih Muffasil. District Giridih and a case was instituted against the appellants by drawing of a formal first information report (Ext. 4) on 23.6.1997 at 9.15 hours. The formal first information report and the fardbeyan have been received on 24.6.1997 in the Court empowered to take cognizance Ext. 1/1 is the signature of PW 2 Tripurari Singh, the other injured in this case and Ext. 3 is the endorsement of the O/C Giridih Muffasil Police Station of the fardbeyan.

3. The case of the prosecution, in brief, is that PW 5 Ramjee Singh, said to have sustained the injuries on his person in the occurrence in question along with PW 3 Pradip Sharma and PW 4 Nakul Choundhary came at the door of the informant on a bullet motorcycle and, Ramjee Singh aforesaid got down from the said motorcycle and he was talking with the informant and other two persons aforesaid remained with the motorcycle aforesaid. It is alleged that all the appellants, all of a sudden, came there when Ramjee Singh was talking with the informant and they caught Ramjee Singh and appellant Pradeep Singh started assaulting Ramjee Singh by a sharp razor with intention to commit his murder which caused grievous injury on the right side of his abdomen Is a result of which, his intestine oozed out of the abdominal cavity and thereafter appellant Pradeep Singh further assaulted him by the said razor causing bleeding injury on the front of his neck. The informant and his son Tripurari Singh (PW 2) intervened in the occurrence to rescue Ramjee Singh and appellant Bijay Singh assaulted the informant by razor causing injury on the left side of his stomach and head and he fell down and when PW 2 Tripurari Singh attempted to save him, appellant Bijay Singh assaulted him by the razor causing bleeding injury on the fingers of his left hand. It is alleged that appellant Sambhu Singh was instigating and abetting the other two appellants to commit the murder of Ramjee Singh. It is alleged that Ramjee Singh fell on the ground sustaining injuries on his person and he was groaning in pain and on the alarm the villagers collected there and the appellants fled away from there. The prosecution case further is that there had been some quarrel between Ramjee Singh and appellant Bijay Singh and others on 21.6.1997 and due to this the appellants have assaulted him.

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 and no such occurrence as alleged has ever taken place and PW 5 Ramjee Singh had criminal antecedent and he might have received injuries at some other place in some other occurrence.

5. The prosecution case, in all, examined seven witnesses to substantiate its case. PW 1 Sita Ram Singh is the informant of this case and said to have sustained injury in the occurrence in question PW 5 Ramjee Singh and PW 2 Tripurari Singh are the two other injured of this case said to have sustained injuries in the occurrence in question. PW 3 Pradip Sharma and PW 4, Nakul Choudhary had accompanied Ramjee Singh on the motorcycle to the house of the informant. However, PW 4 Nakul Choudhary has turned hostile and he does not support the prosecution case PW 6, Dr. Digvijay Kumar has examined the injuries appearing on the person of PW 1 Sita Ram Singh. PW 2 Tripurari Singh and PW 5 Ramjee Singh on 22.6.1997 between 21.45 hours to 21.55 hours on 22.6.1997 and the injury report in respect thereof are Ext. 2 series Ext. 2/3 is the opinion of PW 6 regarding the nature of the injuries appearing on the person of PW 5 Ramjee Singh. PW 7 Ramjanam Sharma is the Investigating Officer of this case. No oral evidence has been brought on behalf of the defence. Ext. 1 is the first information report of Giridih Town Police Station Case No. 222 of 1986 (ST No. 150 of 1998) in which PW 5 Ramjee Singh figures as an accused along with others in a case under Sections 364, 323, 341 and 307 of the Indian Penal Code, under Sections 3 and 5 of the Explosive Substance Act and u/s 27 of the Arms Act.

6. In view of the evidence oral and documentary on the record, the learned trial Court found the appellants guilty and convicted and sentenced them as stated above.

7. Assailing the impugned judgment it has been submitted by the learned counsel for the appellants that the learned Court below did not scan and scrutinize the evidence on the record in proper perspective and has committed a manifest error in coming to the finding of the guilt of the appellants. It has further been submitted that there is inherent inconsistencies and material contradictions in the evidence of PW 5, PW 1 and PW 2 regarding the manner of the occurrence as alleged in the fardbeyan. which completely demolishes the case of the prosecution regarding the manner of the occurrence. It has also been submitted that the medical evidence on the record totally falsifies the case of the prosecution regarding the manner of the assault by razor on PW 1 and PW 2 whereas PW 3 does not whisper in his evidence regarding the assault on PW 1 and PW 2 by appellant Bijay Singh as averred in the fardbeyan as well as catching hold of Ramjee Singh by all the appellants prior to the assault on him. It has been contended that the alleged occurrence is said to have taken place at 20.00 hours and it was completely dark and none of the eye-witnesses aforesaid had the occasion to see the occurrence In question and to identify the appellants as a participant in the occurrence in question and there was also no means of identification there. It has also been contended that as per the averments made in the fardbeyan appellant Pradeep Singh is said to have assaulted Ramjee Singh by razor but in para-3 of his evidence Sita Ram Singh the informant, has deposed that appellants Pradeep Singh and Bijay Singh have assaulted Ramjee Singh by razor but PW 5 in para-1 of his evidence, has deposed that appellant

Bijay Singh has assaulted him by Chhura (dagger) on his neck and abdomen and thus, no reliance can be placed upon the testimony of PW 1, PW 2, PW 3 and PW 5 and they cannot be termed as ocular witnesses of the occurrence in question and the defence version that Ramjee Singh has sustained injuries some where in some different incident appears to be probable and thus, the impugned judgment is unsustainable. In the alternative, it has been submitted that appellants Pradeep Singh and Bijay Singh have remained in custody for more than four years and appellant Sambhu Singh has also remained in custody for several months and as such a lenient view may be taken in the matter considering the period of then custody to modify their sentences to the period already undergone by them.

8. Additional Public Prosecutor did not appear for the State in course of hearing of this case.

9. It is relevant to mention at the very outset that PW 5 Ramjee Singh, said to be one of the injured persons in the occurrence in question had criminal antecedent prior to the occurrence and he had figured as an accused in two or there criminal cases. PW 5 in para-3 of his testimony has admitted the existence of three criminal cases instituted against him prior to the occurrence though he claims to have been acquitted in all those cases. Ext. A and Ext. B are the formal first information report and fardbeyan of Giridih Town Police Station Case No. 222 of 1996 u/s 364, 323, 341 and 307 of the Indian Penal Code, under Sections 3 and 5 of Explosive Substance Act and u/s 27 of the Arms Act in which PW 5 Ramjee Singh figures as an accused along with others. Keeping this in view the evidence of the prosecution has to be scrutinized and scanned in this case. According to the first information report, there was some dispute between Ramjee Singh aforesaid on the one hand and the appellants on the other hand in respect of which an occurrence is said to have taken place on 21.6.1997 i.e. a day prior to the occurrence in question and according to the prosecution case, this incident is the genesis of this occurrence. PW 1 the informant in his evidence on oath is conspicuously silent regarding the genesis of the occurrence as alleged by him in the fardbeyan (Ext. 1). In para-5 of his evidence he has deposed that he cannot say as to why Ramjee Singh was assaulted by the appellants and he has also met Ramjee Singh after the occurrence but he did not ever made any attempt to know as to why he was assaulted by the appellant. PW 5 has, however, deposed regarding the incident of 21.6.1997 which is said to have taken place between him and appellant Nos. 2 and 3. PW 5 has deposed that he is by profession a contractor and the road in village- Sirodih was being constructed by him and he was going with Rs. 5000/- to the site of the work for making payment to the labourers and when he was two hundred feet away from the side, appellant Nos. 2 and 3 came there and they removed the said amount from him and fled away and his munsii (clerk) asked him to report about the occurrence to the police but instead of doing so he came to the house of appellant No. 1 who happens to be the father of the appellant Nos. 2 and 3 and he narrated the incident to him and appellant No. 1 told him that he will get the

amount handed over to him on the arrival of his sons i.e. the other appellants. He has further deposed that he went to the house of appellant No. 1 Sambhu Singh at about 7.00 hours on the following day and Rs. 2000/- was being delivered to him which he refused to accept and he was told to come in the evening. In para-3 of his cross-examination he has deposed that he has got the said contract work under Jawahar Rozgar Yojana and he used to make payment to the labourers on the every weekend the Channho Prasad was his munsii (clerk). In para-4 of his testimony he has deposed that he was going on foot with Rs. 5,000/-and his money was snatched near the temple of God Shankar Jee which is in village Sirodih, but none came there at the time of snatching of the said amount except his munsii aforesaid. He has also deposed that appellant Nos. 2 and 3 were armed with razor at that time but no scuffle did take place between him and the aforesaid appellants. There is no semblance of legal evidence on the record to corroborate the fact that the incident of snatching of the money of PW 5 Ramjee Singh had taken place as alleged. The said munsii has not taken oath in this case for the prosecution to establish the genesis of the occurrence. No document regarding any contract work as alleged has been brought on the record by Ramjee Singh aforesaid. No report to that effect has also been lodged before the concerned Police Station. Even Ram Sewak Sharma the sarpanch of village- Sirodih, who is said to have been informed regarding the said incident by Ramjee Singh, has also not taken oath in this case. No Measurement Book of the and construction of the road has been brought on the record by Ramjee Singh, However, PW 3 has deposed that Ramjee Singh had taken a contract for construction of road and he has also submitted his tender in respect thereof In collusion with Ramjee Singh. But he does not say as to whether Ramjee Singh had taken the tender of the construction of the road of village-Sirodih or not and he had no knowledge of the details of the said contract. There is no iota of evidence on the record to corroborate the fact that PW 5 Ramjee Singh had gone to the house of the appellants for making demand for refund of the said amount either in the evening of 21.6.1997 or in the following morning at 7.00 hours as well as the fact that Rs. 2000/- was being refunded to him in the morning of 22.6.1997 and on his refusal he was asked to come in the evening for getting the said amount. The solitary testimony of PW 5 Ramjee Singh regarding the genesis of the occurrence in the absence of any corroboration by any material evidence does not inspire confidence and the genesis of the occurrence in question does not stand established in this case.

10. The occurrence is said to have taken place at 12.00 hours on 22.6.1997 at the door of PW 1, the informant, when according to the prosecution case. PW 5 Ramjee Singh along with PW 3 and PW 4 had gone there on motorcycle and while he was talking with the informant, the assault on him was perpetrated as alleged and after the occurrence he was brought to the Sadar Hospital, Giridih on that very motorcycle by PW 3 and PW 4 and he was sitting as a pillion rider on the said motorcycle along with them PW 6 Dr. Digvijay Kumar has deposed to have examined PW 5 Ramjee Singh on 22.6.1997 at 21.45 hours in the Sadar

Hospital, Giridih and has found the following injuries appearing on his person :--

- (i) Incised wound 8" x 1/2" x muscle deep below right side armpit.
- (ii) Incised wound 10" x linear extending from right axilla to umbilicus.
- (iii) Incised wound 6" x 1/2" x muscle deep extending from the thoracic to meburney's point.
- (iv) Incised wound 5" x 3.3" x muscle deep extending from epigastrium to elliae rest right side.
- (v) Incised wound 7" x 1/2" x peritoneum deep extending from right thordx to umbilicus.
- (vi) Incised wound 2" x 1/4" skin deep on right side of neck.

The medical witness has further deposed that the aforesaid injuries have been caused by sharp edged weapon and the age of the injuries aforesaid is within 6 hours. The medical witness has further deposed that injury No. (v) may be dangerous to life and rest of the injuries are simple in nature. The medical witness has further deposed that further opinion regarding the nature of the injuries can be obtained from PMCH. Dhanbad as the said injured was referred for treatment there. The medical witness has further deposed to have examined PW 1 Sita Ram Singh on that very day at 21.50 hours and has found the following injuries on his person :--

- "(i) abrasion 1 1/2" x 16" x 16" the left side of abdomen.
- (ii) Abrasion 2" x 16" x 16" above the left elliae rest."

According to the medical witness, the injuries are simple in nature caused by hard and blunt substance and their age is within 6 hours. The medical witness has also further deposed to have examined PW 2 Tripurari Singh at 21.55 hours on the same day and found the following injuries on his person :--

- "(i) Abrasion 1/2" x 16" x 16" on the index finger of left hand."

According to the medical witness, the said injuries are simple in nature caused by hard and blunt substance, the age of which is within 6 hours. The injury report are Ext. 2/2 Ext. 2 and Ext. 2/1 respectively per his pen. The medical witness has also deposed in para-9 of his evidence that all the aforesaid Injuries appearing on the person of Ramjee Singh are not possible by razor and may be caused by dagger and knife and injury No.(v) appearing on the person of Ramjee Singh suggests that the edge of the weapon must be long and sharp one. PW 7 Ramajanam Sharma, the Investigating Officer of this, case has deposed to have inspected the place of occurrence on 23.6.1997 at 10.30 hours and at that time it was no raining. He has further deposed that he did not find any bloodstains at the alleged place of occurrence, which is in front of the house of PW 1, the informant and by the side of the village road which runs from north to south. The evidence of Investigating Officer that he was told by the informant that due to

rain bloodstains have been washed out from the place of occurrence has no relevancy in this case. The Investigating Officer has further deposed that he has not seized the bloodstained clothes of Ramjee Singh. He has also deposed that he has not mentioned in the case diary as to whether the bloodstained clothes of Ramjee Singh was shown to him or not PW 5 Ramjee Singh has deposed that his clothes was besmeared with blood and there was also bloodstains on the clothes of PW 3 Pradip Sharma and his bloodstained clothes is still at his house. PW 3 has deposed that he has bandaged the wound appearing on the abdomen of Ramjee Singh by his gamachi (towel) and got him seated in the motorcycle and brought him to the hospital for his treatment. PW 3, however, does not whisper in his evidence that his clothes was also besmeared with blood PW 1. the informant, in his evidence has not deposed regarding oozing of the blood from the injuries of Ramjee Singh having fallen at the place of occurrence. Similar is the evidence of PW 2 in respect thereof PW 1 has also not deposed that he has stated to the Investigating Officer that the bloodstains fallen at the place of occurrence have been washed out by rain. The said gamachi has also not been brought on the record for the reasons best known to the prosecution. Therefore, the objective finding of the Investigating Officer does not establish the fact that the occurrence in question has taken place in front of the house of the informant on the flank of the village road as averred in the fardbeyan.

11. The manner of the occurrence as averred In the fardbeyan (Ext. 1) is that Ramjee Singh was talking with the informant and all the appellants came there, all of a sudden, and they caught Ramjee Singh and appellant Pradeep Singh started assaulting Ramjee Singh by sharp razor with intention to commit his murder which caused grievous Injury on the right side of his abdomen as a result of which his intestine oozed out of the abdominal cavity and thereafter appellant Pradeep Singh further assaulted him by the said razor causing bleeding injury on the front of his neck and on intervention by PW 1 and PW 2 to rescue Ramjee Singh, appellant Bijay Singh assaulted PW 1 and PW 2 by razor causing bleeding injury on the abdomen and head of PW 1 and on the fingers of the left hand of PW 2. PW 1, the informant, who claims himself to be the ocular witness of the occurrence, has deposed that while Ramjee Singh was talking with him, all the appellants came there and appellant. Sambhu Singh caught Ramjee Singh and appellants Bijay Singh and Pradeep Singh assaulted Ramjee Singh by razor as a result of which he sustained injuries on his abdomen and his intestine oozed out. PW 1, however, does not say regarding the assault causing bleeding injury in front of the neck of Ramjee Singh by appellants Pradeep Singh and Bijay Singh. His evidence is inconsistent with his averment made in the fardbeyan in which it has been categorically stated that it was appellant Pradeep Singh, who has assaulted Ramjee Singh by razor. PW 2 Tripurari Singh in his evidence has deposed that while Ramjee Singh was talking with the informant all the appellants came there and they started assaulting Ramjee Singh and appellants Pradeep Singh and Bijay Singh were armed with razor and they assaulted Ramjee Singh by the said razor causing bleeding injury on his abdomen as a

result of which his intestine oozed on. Therefore, his evidence is also in conflict with the averments made in the fardbeyan regarding the assault on Ramjee Singh by appellant Pradeep Singh only as alleged. PW 2 does not state in his evidence that prior to assault appellant Sambhu Singh had caught Ramjee Singh. Similar is the evidence of PW 3 Pradeep Sharma. According to him, appellants Bijay Singh and Pradeep Singh assaulted Ramjee Singh causing injuries on his person and appellant Sambhu Singh was instigating them for perpetrating assault on Ramjee Singh. PW 3 does not whisper in his evidence regarding the apprehension of Ramjee Singh by appellant Sambhu Singh or by all the appellants. PW 2 has not deposed in his evidence that appellant Sambhu Singh was instigating the other appellants to assault Ramjee Singh. PW 5, on the other hand, has deposed that it was appellant Bijay Singh, who has assaulted him by dagger causing injuries on his abdomen and neck with intention to commit his murder and his intestine had oozed out from the abdominal cavity. The evidence of PW 5 is in conflict with the averments made in the fardbeyan in which it has been stated by the informant that it was appellant Pradeep Singh, who has assaulted Ramjee Singh by dagger and not by appellant Bijay Singh. Therefore, the evidence of PW 5 casts a cloud of suspicion to the very credibility of the warp and woof of the manner of assault on him as averred in the fardbeyan. There is also no iota of evidence on the record to show as to how Ramjee Singh has sustained other four incised injuries on his person, which equally, belies the manner of the occurrence in question. Furthermore, according to the averments made in the fardbeyan. PW 1 and PW 2 were assaulted after the assault was perpetrated on Ramjee Singh, but PW 5 in para-7 of his evidence has deposed that firstly. PW 1 and thereafter PW 2 were assaulted by the appellants and thereafter he was assaulted. On the contrary, PW 1 and PW 2 have deposed that Ramjee Singh was being assaulted and they intervened to rescue him and they were assaulted by appellant Bijay Singh by razor causing bleeding injuries on their person. PW 6, the medical witness has found two abrasions on the person of PW 1 and one abrasion on the person of PW 2 caused by hard and blunt substance. I have stated the Injuries appearing on the person of PW 1, PW 2 and PW 5 in detail in the aforementioned paragraph. Therefore, the assault on the person of PW 1 and PW 2 in the alleged occurrence cannot be said to have been made by razor. It, therefore, appears that PW 1 and PW 2 cannot be said to be the ocular witness of the occurrence in question and in view of the inherent consistencies in their evidence they cannot be said to have the occasion to witness the occurrence. PW 3 in his evidence on oath does not whisper regarding any assault on PW 1 and PW 2. Admittedly, the occurrence is said to have taken place at 22.00 hours and there is evidence on the record to show that it was a dark night. There is no evidence on the record to give an inkling of the fact that there was any means of identification at the place of occurrence. The inherent inconsistencies and material contradictions appearing in the evidence of PW 1, PW 2 and PW 3 read with the evidence of PW 5 affects the substratum of the prosecution case and their evidence has no ring of truth and it does not inspire confidence regarding the manner of the occurrence as alleged in the fardbeyan.

No witness of the vicinity has come forward to support the prosecution when as per the prosecution case, on the arrival of the villagers the appellants are said to have fled away from the place of occurrence. The objective finding of the Investigating Officer referred to above also does not establish the fact regarding the occurrence having been taken place in front of the house of the informant on the flank of the village road as he did not find any bloodstains there. In absence of any bloodstains on the clothes of PW 3, who is said to have carried PW 5 to the hospital on his motorcycle created doubt as to his presence at the time of the occurrence. Therefore, in the facts and circumstances of this case, the defence version appears to be natural and probable. It, therefore, appears that the prosecution has failed to substantiate its case beyond all reasonable doubt in view of the evidence on the record. I see substance in the contention of the learned counsel for the appellants. The learned Court below did not meticulously consider the evidence on the record in proper perspective and has erred in coming to the finding of the guilt of the appellants. Viewed thus, the impugned Judgment is unsustainable.

12. There is merit in this appeal and it succeeds. The appeal is hereby allowed. The impugned judgment of the learned Court below is set aside. The appellants are found not guilty of the charges levelled against them and they are, accordingly, acquitted and discharged from the liabilities of their bail bonds.