

(2015) 02 JH CK 0047

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 770 of 2005

Sheo Charan Singh and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 6
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307

Citation : (2015) 2 AJR 426

Hon'ble Judges : Ravi Nath Verma, J.; Rakesh Ranjan Prasad, J.

Bench : Division Bench

Advocate : P.K. Nayak, for the Appellant; Shekhar Sinha, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment of conviction and the order of sentence dated 10th May, 2005 passed by learned Sessions Judge, Simdega, in Sessions Trial No. 69 of 2002 whereby and whereunder the trial court, having found the appellants guilty for committing murder of Marium Mundain and Sawana Munda, convicted them for the offence punishable under Section 302/149 of the Indian Penal Code and sentenced them to undergo imprisonment for life for the said offence. Further, they, on being found guilty for making an attempt to commit murder of P.W.6-Kondeya Munda, were convicted for the offence under Section 307/149 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for seven years and further to undergo rigorous imprisonment for three years for the offence under Section 148 of the Indian Penal Code.

2. The case of the prosecution is that on 16.11.2001 at about 04.00 P.M., while the informant-Kuwari Mundain (P.W.5) was in her house along with her husband and the family members as well as Sawana Munda (deceased) and were taking

meal, all the appellants armed with Dauli and Balua, came over there and exhorted each other to kill Sawana Munda. Thereupon, they, by dragging Sawana Munda out of the house brought in the courtyard where all the appellants started assaulting Sawana Munda with Dauli and Balua. There at the spot, Sawana Munda died. Thereupon all the appellants fled from there. Thereafter when the informant came out of the house, she met with her daughter-Vinita Mundain (P.W.2), who disclosed to her that while she was going to the house of Kondeya Munda (P.W.6) along with Kondeya Munda, they came across with the appellants, who were variously armed. There they told Kondeya Munda that they will not leave him and then, the appellant Pusha Singh made an attempt to give Dauli over his neck, but it hit on the right arm, as a result of which, his Arm was cut. He anyhow managed to flee from there. Thereafter, they left the place for coming to the house of Pandu Munda (P.W.1)-the husband of the informant. While they were coming to the house of Pandu Munda, they were telling that they had killed Marium Mundain. Thereafter, she along with her daughter-Vinita Mundain (P.W.2), came to the house of Marium Mundain, where they found the door being broke open and the Marium Munda was lying dead.

3. On 17.11.2001, the Officer-in-Charge of Bano Police Station- P.W.-12, Braj Kishore Kumar, received information that some occurrence has taken place at Bukatoli, Village Mahabuyang. He having entered such information in the station diary, proceeded to the place of occurrence and when came to place of occurrence, he recorded the fardbeyan (Ext.4) of P.W.5-Kunwari Mundain on the basis of which, a formal first information was drawn.

4. Immediately, P.W.12-Braj Kishore Kumar took up the investigation. During investigation, he held inquest on the dead bodies of both the deceased- Marium Mundain and Sawana Munda and prepared inquest report (Ext.5 and 5/1). The dead bodies were sent for postmortem examination, which was conducted by P.W.8-Dr. Jitendra Nath Singh on 18.11.2001. During autopsy made on the dead body of Sawana Munda, he found the following injuries:-

(i) An incised wound 10"x4"x6" on anterior aspect of neck from below chin to left side of neck. Glottis, Oesophagus, left carotid artery and left jugular vein and neck muscle in the wound area incised.

(ii) An incised wound, 13"x4" x thoracic cavity present on left side of upper chest extending from left shoulder to upper part of sternum. Left clavicula, left upper two ribs and upper part of sternum were incised.

(iii) An incised wound 10"x6"x thorax and abdominal cavity on left side trunk at lower part of thorax and upper part of abdomen. Left 9", 10" and 11" ribs were incised. Blood clot was present in all the wounds.

The Doctor issued postmortem report Ext.2., with an opinion that all the injuries were ante mortem and grievous in nature and were caused by heavy sharp cutting weapon and that the death was caused due to hemorrhage and shock on account of above mentioned injuries.

On the same day, P.W.8 also held autopsy on the dead body of Marium Mundain and found the following injuries:-

(i) An incised wound around neck size 12"x6"x8" starting on a right side below angle of passing anteriorly below chin towards left side of neck behind left mastoid process incising, entire thickness of neck except skin and low muscle, glottis, esophagus, muscle of neck and vessels spine cord incised..

(ii) An incised wound 10"x8"x abdominal cavity on left side of abdomen, below costal margin. Blood clot present in wound. All the injuries were found ante mortem and grievous in nature and were caused by heavy sharp cutting weapon.

The Doctor issued postmortem report Ext.2/1 with an opinion that the death was caused due to coma and syncope as well as shock and hemorrhage, on account of by injury No. 1.

5. The I.O. also send Kondeya Munda (P.W.6) to hospital for his treatment where Dr. Sureshwar Bhagat, P.H.C. BaNo. (P.W.10) when examined him on 16.11.2001, found the following injuries:-

(i) 5"x3"x1-1/2" sharp cut wound a right shoulder joint with dislocation of joint. Part of humorous bone cut off and was fully separated. It was attached with muscle.

(ii) 1"x1/4"x1/4" sharp cut wound behind right ear mastoid region.

(iii) Abrasion 1/2"x1/2" on the left patela.

(iv) Abrasion 1/2"x1/4" on the right ear pinna.

The doctor issued injury report Ext.3 with an opinion that the injuries have been caused by sharp cutting weapon such as Dauli and the injuries were grievous in nature.

6. The I.O. when made inspection of the first place of occurrence that is house of Pandu Munda, he found copious blood lying in the courtyard. At the other place of occurrence i.e. the house of Mariyum Mundain, he found mark of violence over the door.

7. After completion of the investigation, the I.O. submitted charge sheet, upon which cognizance of the offence was taken. When the case was committed to the court of Sessions, the accused were put on trial where the charges were framed. They denied to have committed such offence.

8. The prosecution, in order to prove its case, examined as many as 12 witnesses. Of them:- P.W.1, Pandu Munda, the husband of the informant-Kuwari Mundain(P.W.5) and the brother of the deceased-Sawana Munda, did not support the case whereas P.W.2 Vinita Mundain-the daughter of the informant, did depose that while she was going along with Kondeya Munda to his house, they came across with the accused persons. One of them assaulted Kondeya Munda with Dauli with a view to kill him. He in spite of receiving injury fled from there

in order to save his life. At that point of time, the accused persons declared that they have killed Mariyum Mundain. P.W.3 is hearsay witness. P.W.4 Channi Mundain though has been declared hostile, but he has testified that the accused persons had killed Sawana Munda. P.W.-5 -the informant has testified almost in the same manner as had made statement in her fardbeyan. P.W.6-Kondeya Munda have also testified in the same manner as has been testified by P.W.2.

9. After closure of the prosecution case, when incriminating circumstances appearing against the appellants, were put to the appellants under Section 313 Cr.P.C., they denied to have committed any offence.

10. The trial court, having found the testimonies of P.W.5- the informant, P.W.4 Channi Mundain, P.W.2 Vinita Mundain and P.W.6-Kondeya Munda trustworthy, getting corroboration from the medical evidences as well as the objective finding of the I.O., did record the judgment of conviction and the order of sentence as aforesaid.

11. Being aggrieved with the judgment of conviction and the order of sentence, this appeal has been preferred by the appellants.

12. Mr. Nayak, learned counsel appearing for the appellants submits that the appellants have falsely been implicated in this case for the reason that the Village has been divided in two groups, one group consisted persons of Munda Community and other groups were of non-tribals to which the appellants were the members and that the persons belonging to Mundas community wanted to sacrifice animals at Sarna Sthal, which were being objected by the members of other community including the appellants and since the appellants were quite vocal, they have been implicated, when the deceased were done to death by other, but the court below has not taken into account this aspect of the matter. Further it was submitted that the court has also relied upon the testimony of the informant but she in her cross-examination has categorically deposed that she out of fear had closed the door when some appellants entered into the house and came out only when the appellants had left home.

13. Further submission which was advanced on behalf of the appellants is that the fardbeyan of P.W.5 has taken to be the first information report by the prosecution but that cannot be taken to be first information report as P.W.6, has testified that after being injured, he straightaway came to police station where he gave statement which was recorded by the police and then he was referred to the Hospital, but the prosecution has not brought the fardbeyan of P.W.6 on record and thereby, the correct picture could not be known and, therefore, the prosecution cannot be said to have proved its case beyond all reasonable doubts.

14. Further submission is that the weapon, which is said to have been seized by the police upon the confession made by two of the accused, was never produced by the prosecution before the court and on account of this, the prosecution case is not worth acceptable. Under the circumstances, all the appellants deserve to be acquitted and the judgment of conviction and the order of sentence is fit to be

set aside.

15. As against this, learned counsel appearing for the State submits that it is true that P.W.6 has stated in the cross examination, that he made statement before the police but he in his examination-in-chief has categorically stated that when he went to the police station the officer-in-charge referred him to Hospital and thereby, it is evident that his fardbeyan was not recorded at the police station. However, as per the evidence of P.W.12, he recorded the fardbeyan of P.W.6 at the place of occurrence upon which the first information report was drawn.

16. Further it was submitted that though P.W.5 has testified in her cross examination, as has been pointed out on behalf of the appellants, but she in her examination-in-chief and also in the cross-examination, has supported her earlier version as has been made out in the first information report. Almost similar is the situation with respect to P.W.4, though has been declared hostile but she in her testimony, has testified about the occurrence, which had taken place in the house of Pandu Munda. Further The testimonies of P.Ws. 2,4, 5 and 6. get corroboration from the medical evidence and also by the objective finding of the I.O. and thereby, the trial court was absolutely justified in recording the judgment of conviction and the order of sentence and hence, it needs not to be interfered with.

17. In the context of the submission advanced on behalf of the parties, we need to examine as to whether the prosecution has been able to establish its case beyond all reasonable or not?

18. The informant,-Kuwari Mundain-P.W.5, though in her cross examination has deposed that when the appellants entered into the room, she out of fear closed the door and only when the appellant left home, she came out but before that, she has categorically testified that while she was in her house along with other family members including P.W.4 Channi Munda, the appellants came, who were armed with Dauli and Balua and when found Sawana Munda over there, they dragged him out the house and assaulted with Dauli and Balua, as a result of which, he died at the spot. Under the circumstances, that part of the testimony of the informant whereby she has said that she had closed the door when the appellants came appears to have been stated out of stress of the cross-examination and moreover that part of the testimony, in the facts and circumstances of the case, never appears to be natural version and, therefore, even if this witness has stated like that, it hardly makes any dent over the case of the prosecution. The testimony of the informant P.W-5, gets support from the testimony of P.W.4, who though has been declared hostile but she has categorically testified that when the appellants came, they found Sawana Munda present in the house and then they dragged him out and killed him. The testimony of eye witnesses relating to murder of Sawana Munda, get corroboration from the medical evidence, as the Doctor has found as many as three injuries, caused by heavy sharp cutting weapon like that of Balua and

Dauli. Further it get corroboration from the objecting finding of the I.O.- P.W.12, who during examination of the place of occurrence, did find copious blood being present at the place of occurrence.

19. So far commission of the murder of the deceased-Mariyum Mundain is concerned, none of the prosecution witness has claimed to have seen the appellants, committing murder of Mariyum Mundain, but the evidences of P.W.2 and P.W.6 are there, who have testified that when the appellants assaulted P.W.-6, he ran away and then the appellants declared that they have killed Mariyum Mundain and is going to kill Sawana Munda. Thus, this piece of evidence is relevant in view of the provision as is there under Section 6 of the Evidence Act, which speaks about the principle of Res gestae. It speaks about the evidence which is connected with the principal subject matter of the charges as parts of one and the same transaction and at the same time it must be sufficiently spontaneous. Meaning thereby that it must be so closely associated with the event which has excited the statement. In other words, when the declaration of any event was made, the person was still under the domination of that event. In the facts of the case, as disclosed by P.Ws. 2 and 6, they had come to a place where they met with P.Ws.2 and 6, after committing murder of Mariyum Mundain and were going to kill Sawana Munda, this indicates that excitement was there on the part of the appellants and out of excitement, they divulged that they have committed murder of Mariyum Mundain.

20. Thus, we do not feel any hesitation in accepting the said disclosure by the appellants before P.Ws.2 and 6, as Res Gestae being relevant. This part of the case of the prosecution that the appellants declared that they killed Mariyum Mundain at her house gets corroboration also from the evidence of P.W.5, who when came to house of Mariyum Mundain along with P.W.2, found her dead. Further we do find that P.W.12 during inspection of the second place of occurrence, did find mark of the violence over door of the house.

21. At this stage argument was advanced on behalf of the defence that this piece of evidence cannot be used by the prosecution, as such incriminating material had never been put to the accused at the time of recording his statement under Section 313 Cr.P.C. It is true that this aspect of the matter was never put to the appellants but the evidences in this regard are there of P.Ws.2 and 6 and, thereby, occasion was there for the appellants to cross examine the witness on this point and as such, even if that piece of evidence was not put to the accused under Section 313 Cr.P.C., it never prejudices the case of the appellants.

22. Now coming to other parts of the case of the prosecution, it be stated that P.W.6 Kondeya Munda and also P.W.2 Vinita Mundain have testified that while they were coming to the house of the Kondeya Munda, the appellants met with them in the way, who after seeing Kondeya Munda, became quite angry and assaulted him as a result of which P.W.6 sustained injury, which gets corroboration from the injury report of the Doctor P.W.10. The evidence of doctor is even corroborative to the manner in which P.W.5 was assaulted.

23. Thus, we do find that the trial court was absolutely justified in recording the judgment of conviction and order of sentence against the appellants and hence, it is hereby, affirmed.

24. In the result, this appeal fails and is dismissed.