
(2010) 01 JH CK 0170
In the Jharkhand High Court

Sheo Dayal Oraon

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2010) 01 JH CK 0170

Hon'ble Judges : Jaya Roy, J; J.C.S. Rawat, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment of conviction and order of sentence dated 4.2.1993 passed against the accused-appellant u/s 302 of the Indian Penal Code sentencing him to undergo imprisonment for life.

2. The brief facts of the case are that the deceased, Bishram Oraon had been working in the Forest Department as a peon posted in Buxidipa. He had been living in the Forest Colony along with his family members. It is stated in the furdbeyan that on 27.12.1991 at about 4 pm, the deceased, Bishram Oraon, a peon of the Forest Department, along with his children and wife went to Ushpa market at Lohardaga on the rickshaw of Hauwa Oraon, PW 1. They purchased certain household articles there and returned to their house on the same; rickshaw. Immediately after dropping his children and wife in the house situated in the Forest Colony, he left his house along with Hauwa Oraon, PW 1, the rickshaw puller stating to his wife that he would come late in the night. The wife of the deceased, Sukri Orain, PW 6, the informant, waited for her husband throughout the night but when he did not return to his house, in the morning, she started searching for her husband. At about 6 a.m. on 28.12.1991, she went about five hundred yards away towards North of her house and she found that her husband was lying dead near Jatratn on Lohardaga-Gumla road. Thereafter, she went to the house of rickshaw puller Hauwa Oraon, PW 1 and she found that

the said rickshaw puller was not present in his house but the rickshaw was standing there. Thereupon, a doubt arose in her mind that the rickshaw puller. Haiwa Oraon, PW1 is involved in the commission of the murder of her husband along with other persons. She then immediately started going to the police station but during the course of her journey to the the police station the officer incharge met her in the way and she gave her statement narrating the incident to him which was recorded as furd beyan-Ext.-2 by the police. On the basis of the said furd beyan, the FIR was recorded at the police station at about 7:15 a.m. The police, thereafter, started investigation, reached the spot, prepared the inquest and sent the dead body to the hospital for autopsy. The Investigating Officer took the statement of the informant u/s 161 Cr.P.C and the investigation culminated in the submission of charge-sheet against the accused-appellant.

3. The charge-sheet was submitted before the Magistrate who took cognizance of the offence. He committed the case to the Court of Session as it was exclusively triable by a Court of Sessions. The Trial Court framed charges against the accused-appellant who denied all the charges leveled against him and claimed to be tried for the charge leveled against him.

4. The prosecution, in support of its case, examined 8 witnesses. PW-I, is Hauwa Oraon, the rickshaw puller who has claimed to be present at the place of incident immediately before the deceased was murdered. Subhash Oraon, Mangra Oraon, Soma Oraon and Jaimangal Oraon are Pws 2, 3, 4 and 5 respectively. According to the prosecution, they are the witnesses of the fact that in the house of Soma Oraon, PW4 the accused-appellant. Sheo Dayal Oraon along with other persons assembled to take liquor and the accused-appellant threatened the deceased, Bishram Oraon to commit his murder as he had not paid Rs. 3/- in lieu of the liquor. These witnesses did not support the prosecution story during the trial and, as such, they have been declared hostile. PW-4 Soma Oraon is the person in whose house the accused-appellant. Sheo Dayal Oraon as well as the deceased, Bishram Oraon had assembled along with other persons and they all consumed liquor in the company of the persons present there and there was a hot exchange of words in between the accused-appellant and the deceased, Bishram Oraon. PW-6, Sukri Oraon is the wife of the deceased who accompanied the deceased in the market along with her children and thereafter they came back to their house. Her husband, Bishram Oraon, the deceased, told his wife that he would come late in the night and proceeded with Hauwa Oraon, PW1. When the deceased did not return to his house in the night, the informant. PW 6 made a thorough search of her husband in the morning. At about 6 a.m. she found that the deceased was lying dead near the road. PW-7 is the Doctor Vidya Vinod Prasad who, at the relevant time, was posted in the Civil Hospital, Lohardaya. He conducted the autopsy on the dead body of the deceased Bishram Oraon. PW-8 Balram Tiwary is the Investigating Officer of the case.

5. After recording the entire evidence of the prosecution witnesses, the accused was examined u/s 313 Cr.P.C. He denied all the averments made in the evidence

of the prosecution witnesses. He stated that he has been falsely implicated in this said case. He further stated that he was sitting in the house of Soma Oraon, PW.4 and Hauwa Oraon, the rickshaw puller, P.W1 as well as Bishram Oraon the deceased were also there. Both the rickshaw puller-Hawua Oraon P.W 1 and Bishram Oraon the deceased went together to their respective homes. It was also stated by him that they all had consumed liquor in the house of Soma Oraon-PW-4. It is also stated by the accused-appellant that as Hauwa Oraon, PW1 and Bishram Oraon, the deceased were under the influence of liquor and were highly intoxicated due to consumption of liquor, he advised them to stay there and not to leave the house of PW-4 Soma Oraon, but Hauwa Oraon, the rickshaw puller, PW1 assured the appellant, Sheo Dayal Oraon, that he would reach the deceased to his house. In the next morning, he heard that the dead body of the deceased had been recovered from the spot.

6. The accused-appellant has not adduced any evidence in support of his defence.

7. We have heard learned Counsel for the parties and perused the record. It is not in dispute that the deceased died in the night of 27.12.1991 at the place where his body was recovered. PW-7, Doctor-Vidya Vinod Prasad conducted post mortem over the dead body of the deceased Bishram Oraon on 28.12.1991 and he found the following ante mortem injuries on his person.

(i)" incised wound 3" ? 1/2" ? bone deep, transversely placed on the top of the head; underlying bone was fractured.

(ii) Incised wound 3" ? 1/2 "bone deep transversely placed on the occipital region about 1" posteriorly to the wound No. 1 underlying bone was fractured.

(iii) Abrasion on right knee 2" ? 2" area.

1. Head:- subdural homtoma was present at the occipital and right temporal rigion with laceration of brain substances corresponding to injury No. 1.

2. Chest - Lungs were pale.

3 Heart:- right chamber empty, left chamber contained liquid blood.

4. Abdomen:- Stomach contained digested food matter liver spleen and intestine were pale, urinary bladder was empty.

8. The Doctor opined that the injuries indicated above were ante mortem injuries on the person of the deceased He also stated that the duration of the injuries was in between 12 hours to 24 hours from the time of conducting the autopsy on the dead body of the deceased. Thus, the medical evidence also establishes that the death occurred at the date, time, and place, as indicated by the prosecution. PW-1 Hauwa Oraon as well as PW-6 Sukri Orain have also stated that the dead body of the deceased was at the place of occurrence. Thus, it is amply established that it was a homicidal death taken place at the date, time and place as indicated by the prosecution.

9. Now, we have to see who was the author of the injuries on the person of the deceased due to which he succumbed to the injuries at the spot. The prosecution has led evidence of PW-1 to the effect that the accused-appellant, Sheo Dayal Oraon committed the murder of the deceased, Bishram Oraon PW-1 Hauwa Oraon has stated that on the date of the incident, he took the deceased Bishram Oraon and his wife and children to the market at Lohardaga and they, after making purchase of certain articles, returned to their house in the Forest Colony and the deceased left his family members in the house and went to the house of Soma Oraon along with him (PW1) in order to take liquor. The deceased purchased five pouches of liquor and the appellant. Sheo Dayal Oraon realized Rs. 3/- from the deceased Bishram Oraon for making payment of the liquor. All the persons present there including PWs-2, 3 and 5 Subhash Oraon, Mangra Oraon and Jaimangal, respectively, consumed liquor along with him. After taking liquor, the accused-appellant demanded money from the deceased, Bishram Oraon in lieu of the liquor and there was some altercation in between the accused-appellant and the deceased in this regard. Thereafter the deceased and P.W. 1, Hauwa Oraon proceeded to their homes. When they were coming to their homes, the accused appellant emerged from a bush at the place of occurrence and he threatened Hauwa Oraon, rickshaw puller by brandishing a "Bhujali (a sharp cutting weapon) asking him to flee away from the spot. Immediately thereafter, P.W.1 Hauwa Oraon fled away from the spot and thereafter the dead body of Bishrama Oraon was found on the road. PW-2 Subash Oraon and PW-3 Mangra Oraon were produced in the court to prove the factum that there was altercation in between the accused appellant and the deceased in the house of Soma Oraon, PW-4 immediately after consuming the liquor and before coming to their houses but they have resiled from their statements in the court and they were declared hostile. They have only stated in their evidence that the accused-appellant, Sheo Dayal Oraon and other persons took liquor in the house of Soma Oraon, PW4. PW-5 Jaimangal Oraon has also resiled from his earlier statement about the altercation which took place in the house of Soma Oraon. PW4 and he was also declared hostile. PW-6 Sukri Orain, the informant and the wife of the deceased was also produced in the court who has stated that they, (her husband and children) had gone to the market by the rickshaw of the PW-1 Hauwa Oraon. She has stated that they purchased certain domestic articles in the market and they came to their house in the evening at about 5 p.m. and thereafter, the deceased left them in their house and he proceeded towards Buxidipa along with rickshaw puller. While parting with her the deceased had stated that he would come late in the night. He did not return to his house in the night. Thereupon, in the morning at about 6 am, she went in search of her husband and she found the dead body of the deceased near by her house on the road where a mela is organized. PW-8 is the investigating Officer who conducted the investigation of this case.

10. Now it has to be seen whether the evidence of the prosecution witnesses is credible and cogent or not. Learned Counsel appearing on behalf of the appellant

contended that the motive which has been assigned to the appellant to commit the murder of the deceased is not fully established as it is not clear from the evidence of the prosecution witnesses that who was the seller of the liquor at the house of Soma Oraon, PW4. It was further pointed out that in the evidence of PW-I, it is stated that five pouches of the liquor was purchased by the deceased Bishram Oraon and the accused-appellant realised Rs. 3/- from him at the house of PW4. He further contended that the evidence of the prosecution is not to the effect that deceased had not paid the entire amount of liquor or it was outstanding towards the deceased and it was to be paid by the appellant.

11. The learned Counsel appearing for the State refuted the aforesaid contention. He has argued that the evidence of PW-1. Hauwa Oraon clearly indicates that immediately after reaching the house of Soma Oraon, the accused appellant purchased five pouches of liquor. The appellant realized Rs. 3/- from the deceased. It is not in the evidence that there was any outstanding amount with the deceased. It is also in the evidence that in the house of Soma Oraon, PW4 there were few guests and the accused-appellant and the deceased and the rickshaw puller, PW1 also joined them in taking liquor. Thus, it is not clearly established that there was some outstanding amount towards the deceased. If the amount had already been realized, then there was no question of again realising the same amount from the deceased. Thus, in these circumstances, the motive assigned is itself doubtful. It is not the case of the prosecution that there is any enmity in between the appellant-accused and the deceased. It is obvious that they were taking liquor jointly till the crime, they had good relation. No enemy will sit together to enjoy the evening or the night in the company of other enemy. In these circumstances, the reason which has been assigned to the appellant to commit the murder of the deceased, does not appear to be believed. The contention of the learned Counsel for the appellant seems to be quite convincing.

12. Learned Counsel appearing for the appellant further pointed out that PW-1, Hauwa Oraon has categorically stated in his cross-examination that the night was dark. The incident took place in the month of December, 1991. Obviously, at about 10 p.m. it will be deep dark night. He further pointed out that in the dark night, the culprit can not be identified by the witnesses. He further pointed out that it is not the case of the prosecution that any witness or P.W.1 identified the accused-appellant by voice. Learned Counsel appearing for the State has refuted this contention. It is obvious that if the night was dark, it was impossible to identify the accused-appellant who emerged from the bush immediately at the place of occurrence along with a "bhugali" in his hand to strike upon the deceased. Thus, the entire evidence becomes doubtful on the point of identification also. It is also pertinent to mention here that the source of light has not been indicated in the FIR. For the first time, it has come during the course of cross-examination of the witnesses that source of light for identifying the accused has not been brought by the prosecution. It creates doubt in the case of the prosecution. If the incident occurred in the month of December at about 10

p.m. in the night, it was obligatory upon the prosecution to establish that how the witness recognized the accused-appellant in the night. Thus, the argument of the learned Counsel for the appellant is quite convincing. It is also in the evidence that PW-4 was also produced by the prosecution to prove the motive but that witness has not stated in his evidence that the quarrel took place and there was a dispute about realising Rs. 3/- from the deceased at his house. It is simply stated by the this witness that some altercation took place between the accused and the deceased. This witness has not been declared hostile by the prosecution. His testimony can not be relied upon and the defense can take the benefit of doubt.

13. Learned Counsel appearing for the appellant further contended that the conduct of PW-I is also suspicious. He was accompanied by the deceased. When he says that the appellant emerged at the spot to kill the deceased and he was asked to flee away from the spot otherwise he would be killed by the accused-appellant, in such a situation the natural conduct of PW1 would have been first to go to the house of the deceased to inform his wife about what had happened there. Learned Counsel for the State refutes this contention but on perusal of the evidence of PW 6, Sukri Oraon it appears that in the morning at about 6 a.m. she reached near the spot and found the dead body of her husband lying there and immediately she rushed to the house of the rickshaw puller, Hauwa Oraon, PW 1 who was found missing in his house but the rickshaw was found standing there. If there was nothing fishy with Hauwa Oraon, PW1 then he would not have left his house in the morning and gone somewhere else to save his skin. If he opted not to go to the house of the deceased in the night, then he could have remained in his own house. But his conduct seems to be unnatural. According to the evidence of the I.O. also his statement was recorded on 29.12.1991 and thus there is no evidence on record to show that he came before 29.12.91 in his house. Thus his evidence coupled with other circumstances, as indicated above, cannot be relied upon. It is also pertinent to mention here that it is the case of the prosecution that the appellant emerged from the bush. According to the evidence of the I.O. he had not seen the bush at the spot. PW1 has stated that there were trees there. In such circumstance we do not find the evidence of PW1 trustworthy. The prosecution has projected a circumstance against the accused-appellant that there was a scuffle between the accused-appellant and the deceased in the house of Soma Oraon, PW4 in which a threat was given by the accused-appellant to the deceased to kill him. Nobody is the eye witness of the occurrence. Although this witness has not been declared hostile but his evidence is of no avail to the prosecution. In the case of *Jagan M. Seshadri v. State of T.N.* 2003 SCC (Cri) 1494 it has been held that the prosecution witness who had not been declared hostile, the prosecution cannot wriggle out of the statement of that witness even though he was an interested witness.

14. In the case of *Mukhtiar Ahmed Ansari Vs. State (N.C.T. of Delhi)*, the apex court held as under:

The learned Counsel for the appellant also urged that it was the case of the prosecution that the police had requisitioned a Maruti car from Ved Prakash Goel. Ved Prakash Goel had been examined as a prosecution witness in this case as PW 1. He however, did not support the prosecution. The prosecution never declared PW1 hostile. His evidence did not support the prosecution. Instead, it supported the defence. The accused hence can rely on that evidence.

A similar question came up for consideration before this Court in Raja Ram v. State of Rajasthan. In that case, the evidence of the doctor who was examined as a P.W. showed that the deceased was being told by one K. that she should implicate the accused or else she might have to face prosecution. The doctor was not declared hostile. The high court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the doctor and it was binding on the prosecution.

15. Pws 2, 3 and 5 have resiled from their statement and they have not supported the prosecution case. So far the evidence of Soma Oraon, PW 4 is concerned, he has only stated that some altercation took place between the deceased and the accused-appellant. It is not in the evidence of PW 4 that the appellant threatened the deceased to kill him. Thus the evidence of the above prosecution witnesses who has been produced as prosecution witness and has not been declared hostile, can be read against the prosecution.

16. In view of the above discussions we do not find the evidence of the prosecution quite convincing to prove the guilt of the accused-appellant to the hilt. The trial court has committed error of appreciation of evidence and thereby has convicted the appellant. The prosecution has failed to prove its case beyond all reasonable doubt. Thus the appellant is entitled to get the benefit of doubt in the circumstances of the case.

17. In the result, the appeal is allowed. The conviction and sentence recorded by the trial court against the appellant is set aside. The appellant is acquitted of the charge. He is on bail. He is discharged from the liabilities of his bail bond. He need not surrender before the trial court.