

(2003) 07 JH CK 0037

In the Jharkhand High Court

Case No : Criminal A. No. 64 of 1996 (R)

Shyam Charan Lohar

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 300

Citation : (2004) CriLJ 1928 : (2004) AIR Jhar HCR 1124 : (2003) 3 JLJR 787

Hon'ble Judges : Hari Shankar Prasad, J; D.N. Prasad, J

Bench : Division Bench

Advocate : Ram Kishore Prasad, for the Appellant; A.B. Mahto, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan Prasad, J.—The sole appellant preferred this appeal against the judgment of conviction dated 22-12-1995 and order of sentence dated 23-12-1995 passed by the Judicial Commissioner, Ranchi in Sessions Trial No. 78 of 1991, whereby and whereunder, the learned Judicial Commissioner convicted the appellant u/s 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.

2. The prosecution case in brief is that the informant Budheshwar Lohra gave fardbeyan alleging therein that on 13-9-1990 at about 7 p.m. he had gone to the place of his elder uncle with his brother-in-law and sister to attend a dinner and his father Nand Lal Lohra and his younger brother Rajendra Lohra were present in the house. At that time, his younger brother Rajendra Lohra started crying and when the informant along with others wanted to come out from the house, they found that the door of the house was closed from outside with chain. However, Rajendra Lohra arrived there, opened the chain and they came out and they were told by Rajendra Lohra that the appellant (Shyam Charan Lohar) assaulted his father with Gupti and fled away. Rajendra Lohra also narrated before the informant and others that a lamp was burning there in the house and his father

was sleeping on the ground at the relevant time. The appellant entered into the house, who was holding Gupti and gave Gupti blow to his father twice and his father died due to the injury caused by Gupti. Rajendra Lohra caught him but he tried to run away and he fell down on the door plank and thereafter he picked up a Danda lying there whereby he assaulted Rajendra Lohra. Thereafter the appellant fled away. Rajendra Lohra raised hulla but no one came there and thereafter he came to the place of his uncle. His brother and others came out to whom he narrated the incident. It is stated that in the night he could not go to the police station as it was raining and on the following day in the morning, he went to the police station. On the basis of the fardbeyan, the police registered a case against the appellant, u/s 302 of the Indian Penal Code. The police investigated into the case and submitted charge-sheet against the police. The appellant appeared before the trial Court and, accordingly, charge was framed, the witnesses were examined from both sides and after hearing both sides, the learned trial Court convicted and sentenced the appellant in the manner as stated above, hence this appeal.

3. There is specific and direct allegation against the appellant for causing Gupti blow repeatedly resulting in the death of Nand Lal Lohra. The Doctor (P.W. 6) held postmortem on the dead body of Nand Lal Lohra and found the following ante-mortem injuries :--

Stab Wound :

(i) 2 x 1/2 cm. x cavity deep (eye) over right zygomatic area situated 6 cm. in front of right ear (pinna). The weapon passed through right zygomatic bone and entered into right orbital cavity.

(ii) Stab wound 1 1/2 x 1/2 cm. x cavity deep on right zygomatic area situated 2 cm. above the preceding injury. The weapon passed through underlying bone, right orbital cavity and entered into the right frontal bone measuring 3 cm. long.

Internal : On internal examination, the doctor found that there was some subdural blood and blood clots in the frontal part of the brain.

The doctor opined that the cause of death was by sharp cutting pointing weapon such as Gupti. He has specifically stated in his cross-examination that both the injuries caused to the deceased could not have been caused due to fall on sharp pointed object.

4. P.W. 1 (Budheshwar Lohra), the informant stated that he had gone in the house of his brother-in-law for taking dinner when his younger brother Rajendra Lohra raised alarms. He further stated that the door of his house was closed from outside with chain and it was opened, he along with others came out and went to the house and saw his father lying dead. He further stated that his young brother, who was present at the spot, narrated the incident and stated that the appellant came to his house with Gupti and assaulted his father by Gupti resulting his death. Rajendra Lohra also stated before them that he had caught

Shyam Charan Lohra but he was threatened to be killed and thereafter he fled away. He stated in his cross-examination that his younger brother raised alarm when they were taking meal.

5. P.W. 2 Rajendra Lohra is an eye-witness and he stated about the incident in clear terms as he claimed to be present in the house at the relevant time. According to him, his father was sleeping on the ground and he was sitting on the cot. A Dhibri was burning there and the door was opened when the appellant came there with Gupti and started assaulting his father by Gupti. He also caught hold the appellant but he threatened him and also assaulted him with danda, which was lying there, and thereafter the appellant fled away and thereafter he raised alarm. He claimed to have gone to the house where his brother had gone for dinner and he narrated the incident to them. He stated in his cross-examination that he had already taken his food. He further stated that he had not seen the appellant putting chain from outside of the door. He also deposed in his cross-examination that he was assaulted by danda by the appellant, which was lying there, and at that time the accused kept the said Gupti in his waist.

6. P.W. 5 also corroborated the version of P.Ws. 1 and 2 by deposing that they were, taking food when Rajendra Lohra (P.W. 2) raised alarm. According to him, the door of the house was closed from outside which was opened by Rajendra Lohra and thereafter Rajendra Lohra narrated the entire incident to them and he found Nand Lal Lohra being dead and there was Dhibri burning.

7. P.W. 7 is a formal witness who proved the first information report and fardbeyan (Exts. 3 and 4) as well as the seizure list (Ext. 5).

8. These witnesses have also been examined from the side of the defence. According to D.W. 1, the informant, Budheshwar Lohra and Rajendra Lohra are residing separately and there is also dispute with the father but, at the same time, he admitted in his cross-examination that there is no case pending as regards to any dispute between them. D.W. 2 stated that the father was on inimical term with his sons but again he admitted that there is no case pending in between them nor there was any quarrel arose. D.W. 3 claimed that there was a dispute in respect of partition of land in between the sons of the deceased but he admitted to have been residing at a distance of 200 yards from the house of the informant and admittedly no litigation is pending in between them.

9. Mr. Ram Kishore Prasad, learned counsel appearing on behalf of the appellant submitted that he has been dragged falsely in the case as well as there is doubt about identification of the appellant as the said night was dark. It is further argued that there was a dispute between sons and father and there might be possible that because of the dispute between them, the sons had committed the crime. It is also submitted that there is a contradiction in the evidence of the P.Ws.

10. The entire submission as made has got no substance in view of the fact that the evidence of eye-witness being the natural witness has fully been

corroborated by the medical evidence.

11. From going through the allegations as made, it is obvious that there is a direct and specific allegation against the sole appellant for assaulting the deceased with Gupti to which Rajendra Lohra (P.W. 2) is an eye-witness, who is very much consistent in his evidence supporting the fact that it was the appellant who assaulted his father by Gupti. The Doctor, who held postmortem, also found stab injury on the person of the deceased and the injury caused by sharp cutting pointing weapon like Gupti and the cause of death was because of the said injury. Thus there is consistent evidence, oral as well as medical that it was the appellant who gave Gupti blow on the person of the deceased, as a result of which, he died. Other witnesses P.Ws. 1 and 5 are also supporting the version of Rajendra Lohra who is an eye-witness of the occurrence. Thus, there appears no ambiguity in identification of the appellant as, at the relevant time, a Dhibri was burning in the house and the evidence of the witnesses is quite natural and is also the only possible witnesses in the circumstances of the case and, as such, his testimony is quite reliable and trustworthy. No doubt, the Investigating Officer has not been examined in this case but non-examination of the Investigating Officer cannot be fatal for the instant case when the involvement of the accused in committing the murder has fully been established by the evidence of eye-witness, which is in conformity with the case made out in the first information report and also the medical evidence. Thus the prosecution case should not fail in the case at hand for non-examination of the Investigating Officer. Nothing has been coming forward to indicate the prejudice being caused to the accused in absence of the Investigating Officer. That being so, the full-proved case from every angle cannot be thrown away.

12. It is also clear that the appellant had some quarrel with the deceased in the day time on the day of occurrence and in order to take revenge, the appellant entered inside the house of the informant in the night and assaulted the deceased with GUPTI. By giving repeated blow by Gupti, a sharp pointed weapon itself, is indicating his intention to cause death. Thus it is evident that the prosecution has fully established the charge against the appellant beyond all reasonable doubts.

13. In the result, I find that the trial Court has rightly convicted and sentenced the appellant u/s 302 of the Indian Penal Code, which does not require for interference. Hence, there appears no merit in this appeal, which is, accordingly, dismissed.

Hari Shankar Phasad, J.

14. I agree.