
(2002) 10 JH CK 0010
In the Jharkhand High Court
Case No : Criminal Appeal No. 98 of 1995 (R)

Sita Ram Oraon @ Situa Oraon	Vs	APPELLANT
State of Bihar (Now Jharkhand)		RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144
Penal Code, 1860 (IPC) — Section 302

Citation : (2003) 1 JCR 307

Hon'ble Judges : Vinod Kumar Gupta, J; Lakshman Oraon, J

Bench : Division Bench

Advocate : A.K. Jha, for the Appellant; Tribeni Mishra, APP, for the Respondent

Final Decision : Dismissed

Judgement

Lakshman Oraon, J.—The sole appellant Sitaram Oraon alias Situa Oraon has preferred this appeal challenging the judgment and order of conviction and sentence dated 29.6.1995 and 1.7.1995 respectively, passed by the learned 8th Additional Judicial Commissioner, Ranchi, in Sessions Trial No. 395 of 1994, whereby, he has been convicted u/s 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. The prosecution case, as per the First Information Report (Ext. 4), based on the fardbeyan of the informant Sukarao Devi (PW 1), wife of deceased Pahna Oraon, is that on 15.11.1993 at 3.00 p.m. while she was at her home at Village-Harchanda, Police Station-Ormanjhi, District-Ranchi, along with her son Suman Oraon (PW 2), aged about 12 years, and was standing in an open space, saw that her husband Pahna Oraon (deceased) along with younger son Sunil Oraon (PW 4), aged about 10 years, was standing near a kathal tree towards south at a distance of 500 yards and witnessing goti game, played by the children. At that time her villagers Ashmu Oraon, Jugeshwar Oraon and Sita Ram alias Situa Oraon went near her husband. Accused Ashmu Oraon ordered to kill him (Pahna Oraon). Then this appellant Sita Ram alias Situa Oraon took out a pistol,

concealed in his waist, and fired causing injury on the temporal region of her husband. On being injured her husband fell down and then all the accused fled away. She and her son Suman Oraon (PW 2) rushed to the place of occurrence and saw her husband dead. All the assailants were chased but they could not be apprehended. The alleged occurrence took place only due to long standing land dispute, including proceedings under Sections 107 and 144 of the Code of Criminal Procedure.

3. In course of trial learned Court below acquitted Jugeshwa Oraon and Ashmu Oraon whereas the sole appellant was convicted and sentenced, as mentioned above.

4. In the present case, the eye-witnesses are the informant Sukaro Devi herself, her son Suman Oraon (PW 2) and another son Sunil Oraon (PW 4). PW 7 Raghav Raman and PW 9 M.R. Mehta are the Investigating Officers whereas PW 8 is Dr. Niranjana Minz, who has conducted post-mortem examination on the dead body of Pahna Oraon.

5. PW 3 Ranthu Oraon on Hulla went to the house of the informant and saw Pahna Oraon dead. The police prepared inquest report of the dead-body on which he and Charku Oraon signed (Exts. 2 and 2/1 respectively). The Investigating Officer also seized blood stained soil and prepared seizure list on which he signed (Ext. 3).

6. PW 5 Mangru Oraon was not informed as to who caused murder of Pahna Oraon. PW 6 Charku Oraon, the seizure list witness and witness on the inquest report, has been tendered. Thus, the evidence of only interested witnesses, who are alleged to be the eye-witnesses, namely, PW 1 Sukaro Devi (informant), her two sons PW 2 (Suman Oraon) and PW 4 (Sunil Oraon) are to be considered in the present case as to whether the judgment and order of conviction and sentence passed by the learned Court below against the sole appellant can be sustained.

7. At the time of the alleged occurrence, PW 1 Sukaro Devi (informant) and her son Suman Oraon (PW 2) were in front of their house, standing in an open space. Their khalian is situated at a distance of 500 yards from their house towards south. There is a kathal tree. It was the next day of Diwali. Some boys were playing kancha (goti) near the kathal tree. Her husband Pahan Oraon and son Sunil Oraon (PW 4) had also gone there. They have deposed that at that time Ashmu, Juglu alias Judgeswar and Situa alias Sita Ram murdered her husband by firing pistol. This appellant Situa fired with pistol, causing injury on the right temporal region of her husband. When her husband fell down, then the accused fled away. Her son tried to chase the assailants but could not apprehend them.

The alleged occurrence took place only due to long standing land dispute. PW 1 informed the police, who recorded her statement on which she gave her L.T.I. By the side of her house, the houses of other villagers, namely, Baijo Oraon, Ram Nath Oraon, Jagtu Oraon. Lachho Oraon are there. But at the time of the alleged

occurrence, they were not in their respective house. Only this appellant (Situa Oraon) was armed with pistol and the other two accused Ashmu and Jugeshwar were empty handed. The other two accused, who were empty handed, had concealed themselves and did nothing in assaulting her husband. The Investigating Officer could not trace out the fired empty cartridge but he seized the blood stained soil from the place of occurrence and prepared seizure list. Similar is the statement of her son Suman Oraon (PW 2).

8. PW 4 Sunil Oraon is a child witness, aged about 10 years at the time of the alleged occurrence, who had gone to the khalihan near the kathal tree along with his father Pahna Oraon. This witness, although a child witness, has the knowledge of understanding. The Court has tested his knowledge and understanding, which he replied satisfactorily. This is also clear that this witness, although aged about 10 years at the time of the alleged occurrence, but he was a student. He has signed on his deposition in Hindi but has given the date below it in English. This also shows that this minor boy, a student, had full knowledge of understanding. It is further clear that he was examined in chief on 30th November, 1994 and cross-examined only in part on that day. Subsequently, on 24th January, 1995 i.e. about one month and 24 days later, he was again recalled and cross-examined at length. There he also signed in Hindi and gave the dates in English, which shows his full understanding. Even then the evidence of the child witness has to be scrutinized carefully as to whether he is a tutored witness or not.

9. The alleged occurrence took place on 15.11.1993 at 3.00 p.m. The fardbeyan was recorded on that very day at about 4.15 p.m. and First Information Report was lodged on the same day at 7.00 p.m. Hence there is no delay in passing through these procedures. On the same day, the informant Sukrao Devi was re-examined and soon thereafter, the statement of this child witness Sunil Oraon (PW 4) was recorded. Thereafter, the statement of PW 2 Suman Oraon was recorded. Thus, there was no time for any concoction as their statements were recorded soon after the occurrence.

10. PW 4 Sunil Oraon, as I have stated above, had gone to kathal tree where he has got his khalihan. His father was standing by the side of Kathal tree. At that time, he was playing kancha (goti) along with other village boys. At that time Mahabir, Jethal, Sunil and Ors. were also playing guli danda. Accused Situa alias Sita Ram Oraon, Juglu alias Judgeshwar and Ashmu reached there and Ashmu ordered Situa as to what he was watching. Then Situa alias Sita Ram Oraon took out a pistol from his waist and fired, causing injury on the right temporal region of his father. On being injured, his father fell down. Thereafter, all the three accused fled away. This witness has also given reasons of the alleged occurrence that his father had land dispute with the accused-persons and that is why they caused murder of his father. He was cross-examined at length but nothing could be taken by the defence to discredit his evidence. This boy was playing kancha (goti) along with other village boys. This appellant Situa alias Sita Ram Oraon

was standing in front of him. The boy is intelligent enough as while playing kancha (goti) along with other village boys, his attention was towards his father and this sole appellant Situa, who was standing in front of him. He saw that this appellant took out a pistol, which he had concealed under his shirt. The other two accused Jugeshwar and Ashmu were in Dhoti whereas this appellant was wearing shirt and pant. Without any altercation, this appellant fired, causing injury on the right temporal region of his father, who fell down and died instantaneously. He started crying by the side of his dead father. No one chased the assailants within 2 or 3 minutes, his mother Sukaro Devi (PW 1) and elder brother Suman Oraon (PW 2) also reached at the place of occurrence. Thereafter, the villagers, 50 to 60 in number, also assembled at the place of occurrence after 10 to 15 minutes of the alleged occurrence, who are all of village-Harchanda. Her mother has not gone to the Police Station but his brother had gone on a cycle to inform the police, which is hardly at a distance of 3 kms. from the place of occurrence. The police arrived in between 4.00 and quarter to 4.00 p.m. The police recorded the statement and also enquired from the villagers. His statement was also recorded.

11. From the trend of suggestions to all these eye-witnesses i.e, PWs 1, 2 and 4, the defence has suggested that as it was the next day of Diwali, the deceased had taken liquor and was gambling along with other villagers and in course of gambling, there was some altercation and amongst them, some one fired, causing injury on the right temporal region of his father, resulting his death. This suggestion remained only a suggestion as the defence has not brought any witness to corroborate this fact. The I.O. Raghav Raman (PW 7) had gone to Village-Harchanda on 15.11.1993 along with M.R. Mehta, Officer-in-charge, Ormanjhi Police Station where fardbeyan of Sukarao Devi was recorded, on which she gave her L.T.I. and was signed by M.R. Mehta (Ext. 1/2) under his endorsement and signature. A formal First Information Report (Ext. 4) was also drawn and written by Arun Yadav, on which the Officer-in-Charge M.R. Mehta signed. The investigation was completed by PW 9 M.R. Mehta, Officer-in-Charge, Ormanjhi Police Station. He received information that some one had caused murder of one person at Village-Harchanda by firing. He entered S.D. Entry No. 346 dated 15.11.1993 and along with the A.S.I., R.R. Singh and other police personnel went to Village-Harchanda. He recorded the fardbeyan of Sukaro Devi (PW 1), on which she gave her L.T.I, and PW 2 Suman Oraon also signed on it (Ext. 1/1). He also endorsed and signed on it (Ext. 1/2) for drawing a formal First Information Report (Ext. 4). He inspected the place of occurrence, prepared inquest report in his pen and signature (Ext. 2) and also seized blood stained soil and prepared seizure list on which he signed (Exts. 2/2 and 3/1 respectively). Thereafter, he sent the dead body to Rajendra Medical College and Hospital, Ranchi, for post-mortem examination.

12. The I.O. found the place of occurrence at a distance of 500 yards south from Village-Harchanda, which is just south of a kathal tree. The place of occurrence is an open space, which is clearly visible from the house of the informant. He found

the dead body of Pahna Oraon near the kathal tree. He found lacerated wound on the right temporal region of Pahna Oraon, having profuse bleeding at the place of occurrence.

13. Dr. Niranjan Minz (PW 8) has conducted the post-mortem examination on the dead body of Pahna Oraon on 16.11.1993 at 11.00 a.m. and found lacerated wound measuring 9 cm x 11 cm x bone deep on the right side of the face, starting from mastoid region to the nose. The underlying soft tissues were completely lacerated and the underlying bones were broken and blown up into pieces, producing canal like wound, which was continued and lacerated. The doctor opined that the wound was caused by projectiles, such as, fire-arms. The death was due to shock and haemorrhage caused within 12 to 36 hours from the time of post-mortem examination.

14. In the present case, as it was the next day of Diwali, the nearby villagers were not present in the village homes, whose houses are nearby the house of the informant. The informant's husband had gone to the khalihan along with his younger son Sunil Oraon which is at a distance of 500 yards from her house and where there is a kathal tree. She and her son Suman Oraon were at their home. As the place of occurrence was open and visible by them (PWs 1 and 2), they saw that all the three accused, including this appellant, went there and injured her husband by opening fire, due to long standing land dispute as also proceedings under Sections 107 and 144, Cr PC. They rushed to the place of occurrence and as per the evidence of the PW 4, who was along with his father at the place of occurrence, his mother and brother reached there within 2-3 minutes. Thereafter, other villagers reached thereafter 10 to 15 minutes, numbering 50 to 60. By the time, both these witnesses (PWs 1 and 2) reached there, the assailants had fled away. Thus, the only eye-witness remained Sunil Oraon (PW 4), who was at the place of occurrence along with his father. This boy was playing kancha (goti) and his father was watching the children's play of guli danda. At that time, as per the statement of PW 4, Situa alias Sitaram (appellant) also reached there and was standing in front of this boy (PW 4). Within a moment, other two accused also arrived there. This appellant took out a pistol and fired causing injury on the right temporal region of his father. His father, on being injured, fell down and died. The police came soon thereafter where statement of his mother was recorded. Thereafter, the I.O. prepared inquest report and also seized blood stained soil and prepared seizure list on which the witnesses signed. The dead body was sent for post-mortem examination. The doctor found injuries on the right side of the face near right mastoid region upto nose. The bone was completely damaged and there was a canal like wound. The evidence of PW 8, Dr. Niranjan Minz, corroborated the evidence of PWs 1, 2 and 4. The oral evidence is further corroborated by the Inspection of the place of occurrence by the I.O. and finding of materials i.e. dead body, having injuries thereon, and also blood stained soils at that place and the distance of the place of occurrence from the house of the deceased. All are fully corroborated by the evidence of all the witnesses.

15. I have already stated above that PW 4 Sunil Oraon, although a child witness, is fully capable to depose with full understanding. I have also stated above that his evidence can very well be relied upon as his evidence has further been corroborated by his mother (PW 1), brother (PW 4), Doctor (PW 8) and the I.O. (PW 9).

16. In my above considered view, due to long standing land dispute as also the pendency of cases under Sections 107 and 144, Cr PC in between this appellant and the deceased, the alleged occurrence took place. This child witness has stated that due to long standing land dispute, they were neither in visiting terms with the accused nor they were in talking terms. Thus. I find that the prosecution, although has examined the interested and close related witnesses, who are wife and sons of the deceased, has given trustworthy evidence, which is quite natural as a village witness.

As the other villages were not available at their homes, as deposed by PW 1 herself, there was no possibility of any village independent eye-witness. On the other hand, the villagers had assembled there at the place of occurrence after 10 to 15 minutes and by that time, the assailant had fled away. Thus, had they been examined, they would have deposed like PW 5 Mangaru Oraon and PW 6 Charku Oraon.

17. Thus, I find that there is no merit in this criminal appeal. On the other hand, I find no infirmity in the impugned judgment and order of conviction and sentence passed by the learned Court below.

18. In the result, this criminal appeal is dismissed and the impugned judgment and order of conviction and- sentence are hereby confirmed.

Vishnudeo Narayan, J.

I agree.