

(2016) 02 JH CK 0173

In the Jharkhand High Court

Case No : Cr. Appeal (DB) No. 1670 of 2003 with Sessions Trial No. 170 of 1996, G.R. Case No. 366 of 1995 arising out of Palkot P.S. Case No. 24 of 1995.

Sodair Nagesia and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 101, 148, 149, 300, 323

Citation : (2016) 2 AIRJharR 480 : (2016) 2 ECrC 632 : (2016) 2 JBCJ 473 : (2016) 2 JLJR 479

Hon'ble Judges : D.N. Upadhyay; Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Ashutosh Anand, Amicus curiae, Triveni Mishra, Advocate, for the Appellant; Sanjay Kumar Pandey, A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

1. This criminal appeal has been directed against the judgment of conviction and order of sentence dated 29.09.2003 and 30.09.2003 respectively passed by the Addl. Sessions Judge, Fast Track Court No.1, Gumla in connection with Sessions Trial No. 170 of 1996 corresponding to G.R. Case No. 366 of 1995 arising out of Palkot P.S. Case No. 24 of 1995 whereby all the appellants have been held guilty for the offences punishable under Sections 302 read with Section 149, 148 and 323 of the Indian Penal Code and sentenced to undergo R.I. for life under Section 302 read with 149 of the Indian Penal Code and R.I. for two years under Section 148 of the Indian Penal Code. No separate sentence under Section 323 of the Indian Penal Code has been inflicted.

2. The facts, emerging from the First Information Report, are that on 28.05.1995 at about 8.00 a.m. the informant who was grazing goat at Asanpani had seen nine plough in his field. Thereafter he went to inform his father Ganthura Nagesia and other relatives Garthu Nagesia and Gendal Nagesia. After collecting them

when the informant with his father went to Asanpani field, they found that the appellants were ploughing the field. When they raised objection against ploughing of the field, appellant Jitu Nagesia told that he would plough the field and whosoever will come to raise objection, he would be done to death. Thereafter Daura Nagesia who was standing at the bund provoked his associates upon which all the appellants who are named in the F.I.R., took out Balua and Tangi, which were kept in the field from before, and started causing assault to informant and their companions. Daura Nagesia, Sukra Nagesia and Baisku Nagesia caused assault to Gendal Nagesia and killed him. The informant and his companion were also subjected to assault by the appellants by means of respective weapons which they were holding and also by means of stones thrown with the help of catapult. After committing the offence, the accused persons fled away.

On the basis of First Information Report lodged by Hafindar Nagesia (PW-4), Gumla, Palkot P.S. Case No. 24 of 1995 under Sections 147, 148, 149, 447, 324, 323, 337 and 302 of the Indian Penal Code was registered. The investigation was carried out, inquest report was prepared, the weapon and other articles found at the place of occurrence were seized and dead body of Gendal Nagesia was sent for post mortem examination. The Investigating Officer had recorded statement of witnesses and after concluding the investigation, submitted charge-sheet against all the appellants. Accordingly, cognizance was taken and the appellants were put on trial after framing of the charge. The learned trial judge, considering the evidences and documents on record, held the appellants guilty for the offence punishable under Section 302/149, 148 and 323 of the Indian Penal Code and inflicted sentence, as indicated above.

3. Since learned counsel Mr. Triveni Mishra who was not present on the last date and today he is present but not feeling well, learned counsel Sri Ashutosh Anand has been appointed as amicus curiae to argue the case on behalf of the appellants.

4. The impugned judgment of conviction and sentence has been challenged firstly on the ground that the Investigating Officer has not been examined and that has caused great prejudice to the appellants. Due to non-examination of the Investigating Officer, place of occurrence has not been proved. The contradictions appearing in the statement of witnesses could not be referred. Some other facts like institution of counter case and the result of investigation have not been brought on record. Secondly, there was no unlawful assemblage. The appellants were ploughing their field at the time of occurrence and ploughing field could not be considered unlawful. Land dispute prevailing between the parties has been admitted. Injuries caused to some of the appellants have also been admitted. As a matter of facts, the informant and his companion were the aggressor and they had been to the place of occurrence to commit offence and they were armed with Balua, Tangi etc. When the appellants did not agree to the dictate and continued ploughing, they were subjected to assault by the informant party and they

sustained injuries on their person and that is apparent from admission of some of the prosecution witnesses and also from the evidence of DW-1. Therefore, conviction of the appellants under Section 302 with the aid of Section 149 of the Indian Penal Code has wrongly been recorded by the learned Addl. Sessions Judge and that is liable to be set aside. Thirdly, PW-1 to PW-4 have claimed themselves to be injured eye witnesses but they have not given consistent account with regard to the injuries inflicted on the person of deceased. Aforesaid four witnesses are also not consistent on the manner of occurrence. Somebody has said that altogether four injuries had been caused to the deceased, somebody says that two injuries were caused and somebody says that repeated blows by means of Tangi and Balua were given to the deceased. The seized weapon were not produced before the court during trial. What happened to the blood stained soil seized from the place of occurrence is unknown to the case record. Due to non-examination of the Investigating Officer, the fact remained unproved as to the weapon seized from the place of occurrence actually belongs to whom. It is a case of the appellants that informant and his companion had been to the place armed with deadly weapon like Balua and Tangi and they had caused assault to DW-1 and his associates. The investigation was done in partial manner and the Investigating Officer has submitted charge-sheet against the appellants under influence of informant and his associates.

5. Learned A.P.P. has opposed the arguments and submitted that ingredients for constituting unlawful assembly, as indicated under Section 141 of the Indian Penal Code, have well been proved. The role played by the appellants brings them within the purview of Section 142 of the Indian Penal Code. Besides the above, the assemblage of the appellants at the place of occurrence was not for ploughing the field rather they had been to the place to have forceful possession over the field in question. Nine ploughs at a time used by them goes to prove their intention. Tangi and Balua kept at the place of occurrence again goes to show their intention. When the informant raised objection against ploughing of the field and said that the land has already been partitioned, appellant Jitu told we would plough the field, whosoever would resist, would be done to death, also shows their intention. Not only that, appellant Daura instigated the companion accused, who immediately took possession of the weapon kept at the place and caused assault to deceased Gendal, the informant and his companion. Prosecution has proved its case beyond shadow of all reasonable doubts. PW-1 to PW-4 stood consistent on all material points. The ocular version of these witnesses find support from the evidence of PW- 7 Dr. Krishna Prasad who has proved the post mortem report and described the injuries appearing on the person of the deceased. Although Dr. B.N. Sharma has not been examined, but the injury reports issued by him have been proved by PW-8 Rajeshwar Pathak. The aforesaid injury reports Exhibit-4 to 4/2 relates to injuries caused to Hirthu Nagesia, Gandhura Nagesia and Sindhu Nagesia. Exhibit-4 to 4/2 are, at least proof of the fact that they had sustained injuries in the incident. PW-5 Mangal Nath Nagesia is a witness to the inquest and he has proved his signature and

signature of Bahura Nagesia appearing on the inquest report. It is submitted that non-examination of the Investigating Officer has not caused any prejudice to the appellants. No contradiction from mouth of any of the witness has been taken. PW-1 to PW-4 have stuck to their statement recorded under Section 161 of the Cr.P.C. Neither it was exaggerated nor omitted. In a case in which direct evidence is available, non-examination of the Investigating Officer to prove the place of occurrence is not fatal. Since the appellants have rightly been convicted, there is no merit in this appeal.

6. We have gone through the evidences and the documents available on record and also perused the impugned judgment of conviction and sentence. The sum and substance of evidence of PW-1 to PW-4 is that the land in question was partitioned between the parties after the decree passed in partition suit. The appellants had been claiming their possession over the land in question and to prove it, they had been using nine ploughs at a time in that very field. They had also kept weapon like Tangi and Balua at the place of occurrence. When the informant and his companion raised objection against ploughing of the field, the appellants became furious and appellant Daura who was armed with Balua, appellant Sukra and Baisku who were armed with Tangi inflicted blows by their respective weapons to Gendal Nagesia, the deceased. The injuries were caused on neck and temporal region. Gendal Nagesia died at the spot. The remaining appellants also joined the former accused/appellants and participated in the assault and caused injuries to informant and his companion. The story brought on record by PW-1 to PW-4 clearly indicates that the appellants had been to the place of occurrence to have forceful possession or to show their possession over the land in question and they had assembled at the place and kept weapon like Tangi and Balua at the place of occurrence. They were expecting the objection to be raised by informant side. As soon as the informant with his companion reached to the place to raise objection against ploughing of the field, the appellants caused them injuries and killed Gendal Nagesia. Considering the evidence so brought on record, we find that ingredients of Section 141 and 142 of the Indian Penal Code are well attracted and proved by the prosecution witnesses. Since Gendal Nagesia was done to death in prosecution of the common object of said unlawful assembly, Section 302 read with Section 149 of the Indian Penal Code came into application.

7. Now the question arises, whether the appellants have succeeded to prove that it was a free fight between the parties and they are not liable to be held guilty under Section 302/149 of the Indian Penal Code ?

We have again considered the evidence on record and examined the evidence of DW-1. Some of the appellants had sustained injuries find support from admission of PW-2 para-5 and PW-4 para-6. The prosecution witnesses have also admitted that case against them was also lodged by the appellants. Jitu Nagesia DW-1, appellant No. 6, in the present appeal, in his deposition has admitted the time of occurrence, place of occurrence and presence of all the appellants at that point of

time. What more he has said is that it were the informant and his companion who had been to the place to restrain the appellants from ploughing the field and the informant party were armed with Balua, Tangi etc. When the appellants did not agree to obey the instruction, they were subjected to assault by the informant and his companion. He did not say in his examination-in-chief that they have lodged any case against the informant and his companion. No injury report has been proved that the appellants namely Sukhu Nagesia, Ganndur Nagesia, Baisku Nagesia and Jitu Nagesia had sustained injuries in the incident. No First Information Report of counter case, if lodged, has been brought on record. Therefore, the plea taken by the appellants has not been proved by them. Since no document by the appellants has been brought on record that informant party were the aggressor, they had been to the place of occurrence armed with deadly weapon, they had caused injury to some of the appellants, we do not agree to accept the argument that it was a free fight between the parties and therefore, holding the appellants guilty under Section 302 with the aid of Section 149 of the Indian Penal Code is incorrect. Plea of story of free fight has not been proved by the appellants and therefore, the argument stand rejected.

8. The appellants have repeatedly raised the points that non-examination of the Investigating Officer has caused prejudice to them, contradiction regarding time of occurrence has not been made clear and the place of occurrence has not been proved. So far as the time of occurrence, place of occurrence and assemblage of the appellants at the place of occurrence at the relevant point of time are concerned, DW-1 himself has admitted and he is non-else but appellant No. 6. Therefore, non-examination of the Investigating Officer for proving all these facts has not caused any prejudice. Furthermore, we do not find that any contradictions or omission have been taken from mouth of any of the witnesses by the appellants during cross-examination. For this reason too, we do not consider that non-examination of the Investigating Officer has caused any prejudice to the appellants. Non-production of weapon seized from the place of occurrence has again become immaterial when it is considered that ocular version of PW-1 to PW-4 is acceptable. Needless to mention that injuries caused by appellant Daura Nagesia by means of Balua and injury caused to deceased by appellant Sukra Nagesia and Baisku Nagesia by means of Tangi find support from the post mortem report. Therefore, ocular evidence find corroboration from medical evidence.

9. Learned counsel Shri Ashutosh Anand has vehemently argued that PW-1 to PW-4 are not consistent on the point of manner of occurrence and the injuries inflicted to the deceased by the respective appellants. We have carefully scrutinised the evidence of PW-1 to PW-4 and also tried to visualise the occurrence in the light of evidence available. According to evidence available, appellant Daura Nagesia was armed with Balua whereas remaining appellants were having Tangi in their hand. When the informant and his companion raised objection against ploughing of the field, they became furious and started inflicting injuries to their targets by the respective weapons which they were

holding. It is but natural in such a situation, the person who are targeted would try to save themselves and it is not expected that each and every blow inflicted by respective weapon causing injury at particular part of the body could be explained by each and every witnesses in a similar manner. We do not consider it material if any witness says it was Daura who caused injury first or it was Sukra or Baisku who inflicted blows by means of Tangi to the deceased first. The facts remain that Gendal Nagesia (deceased) had sustained two injuries caused by Tangi and one injury caused by Balua and that is being supported by PW-7. Those injuries were appearing on his neck and head causing cut injury to parietal bone.

10. Considering all these aspects and the discussions made above, we do not find that the impugned judgment of conviction and sentence recorded by the trial judge suffers from any illegality, ambiguity or on the basis of mis-appreciation of evidence. The learned trial judge has discussed all the points with sound reasons. We do not feel inclined to interfere with the impugned judgment of conviction and sentence recorded by the Addl. Sessions Judge, Fast Track Court No.1, Gumla in connection with Sessions Trial No. 170 of 1996 corresponding to G.R. Case No. 366 of 1995 arising out of Palkot P.S. Case No. 24 of 1995.

11. It reveals from the report issued vide Memo No. 136 dated 11.01.2005 issued from the Office of the Superintendent, Birsa Munda Central Jial, Ranchi addressed to family members of Sukhu Nagesia, that Sukhu Nagesia s/o late Chhotu Nagesia died on 11.01.2005 at RIMS, Ranchi. If the report is correct, the appeal as against appellant Sukhu Nagesia shall stand abated.

12. Appellants Daura Nagesia and Baisku Nagesia are already in jail. The remaining appellants namely, Sodair Nagesia, Charku Nagesia, Buda Bagesia, Jagtu Nagesia, Jitu Nagesia, Sukra Nagesia and Gandur Nagesia are on bail, their bail bonds are hereby cancelled. They are directed to surrender before the convicting/successor court within six weeks from today to serve out the sentence failing compliance the convicting/successor court shall issue processes to secure their attendance and the court shall also do needful to forfeit the bail amount.

13. In the result, this appeal stands dismissed.