
(2009) 07 JH CK 0100
In the Jharkhand High Court

State of Bihar (Now Jharkhand)

APPELLANT

Vs

Suresh Kapri and Others

RESPONDENT

Date of Decision : 13-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) 07 JH CK 0100

Hon'ble Judges : Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. All the nine, above named, respondents, who were charged u/s 302/34 IPC for intentionally committing the murder of Ganesh Manjhi in furtherance of their common intention on 18/11/1990 between 8.00 p.m. to 9.00 p.m. at Village Hiradih in the District of Dumka, were acquitted from the said charge by the learned 1st Additional Sessions Judge, Santhal Parganas, Dumka, in Sessions Case No. 193 of 1991 by the impugned judgment dated 04/10/1991. Against the said judgment of acquittal, the State has filed the present government appeal.

2. The facts, in short, are that on 18/11/1990 at about 1.30 p.m., Ganesh Manjhi (the deceased) left his house for Baniyara Hat. His family members were waiting for him but he did not return till evening. At about 8-9 p.m., there was hulla in the village that a thief had been apprehended near Dhobai River, while he was committing theft of paddy. The said thief was beaten by the villagers. When this hulla spread in the village, then all the villagers including males, females, children etc. came out of their houses. The informant, alongwith her son Ashok Manjhi, elder brother of her husband (Bhaisur) Farsi Manjhi, nephew Dukhan Manjhi and villager Kumbhkarn Manjhi went near Dhobai River and found that her husband (the deceased) was lying there in injured condition and at that place pulses, potatoes and some vegetables were scattered. At that place, the informant allegedly saw that all the nine respondents, herein, were present there and they were dragging her husband and they were also assaulting him. When

her "Bhaisur" wanted to give water to the injured, those nine persons became ready to assault him. Thereafter, the respondents dragged the injured towards their own house. The injured is said to have died near the house of Respondent No. 4 Motilal Manjhi in the village. The informant stated that she remained in her house for the whole night and in the next morning only she went to the police station with other villagers to give information about the occurrence.

The motive for such occurrence was said to be the land dispute between the parties.

3. In order to establish the charges, altogether 10 witnesses were examined on behalf of the prosecution. The learned trial court, on the basis of the evidence and materials on record, acquitted the accused respondents from the charges, holding that the case of the prosecution was doubtful and not a single independent witness was examined in the case though the definite case of the prosecution was that a large number of villagers had assembled at the place of occurrence but not a single witness came to support the prosecution case.

4. Challenging the impugned judgment of acquittal, Miss Anita Sinha, learned A.P.P. appearing for the State submitted that in view of the specific and direct evidences of PWs. 1, 2 and 3, who were the eyewitnesses to the occurrence, the trial court ought not to have acquitted the accused respondents.

5. On the other hand, Mr. D.K. Prasad, learned Counsel appearing for the accused respondents submitted that all the three alleged eyewitnesses, i.e. PWs. 1, 2 and 3 are close relatives and family members of the deceased therefore, their evidence cannot be said to be of much value, when specific and definite case of the prosecution was that the villagers had assembled at the place of occurrence after hearing hulla that a thief had been apprehended and he was being beaten then in such situation, it was incumbent upon the prosecution to examine some of the villagers, who are the independent witnesses but not a single villager was examined by the prosecution and, therefore, the veracity of the prosecution case itself becomes doubtful and, as such, the learned trial court rightly acquitted the accused persons from the charges leveled against them.

6. We have gone through the evidences of all the prosecution witnesses. PW-1 is Jamun Manjhi, who has stated in his examination in chief that when he reached at the place of occurrence he found Ganesh Manjhi in unconscious state. The 9 accused persons were also seen at the place of occurrence, they were holding Lathi and they brought the deceased Ganesh Manjhi dragging him in front of the house of Motilal Manjhi.

In view of the this statement made by this witness, it is clear that when this witness reached at the place of occurrence, he found the deceased Ganesh Manjhi in unconscious condition. This witness in cross-examination has admitted that he is closely related to the deceased. From the evidence of this witness, it is clear that he did not see the accused respondents assaulting the deceased at the place of occurrence. As a matter of fact, when he reached at the place of

occurrence, the deceased was already lying on the ground unconscious in injured condition.

7. PW-2 Farsi Manjhi, is said to be the another eyewitness and he has stated in his evidence that on the relevant date at about 8.00 p.m., after hearing hulla, he went near Dhobai River and he saw Ganesh Manjhi was being assaulted by the accused persons, who were holding Lathi and when he wanted to give water to the injured, the accused persons did not allow him to give water to the injured. He further stated that Ganesh Manjhi was lying on the ground in injured condition. Thereafter, the accused persons lifted the injured Ganesh and brought him near the house of Motilal, where the injured died. This witness, in his cross-examination, has stated that when he reached at the place of occurrence, he saw Ganesh was lying on the ground and the accused persons were assaulting him. He further stated that he stayed at the place of occurrence for half an hour and till he remained there, the accused persons were continuously assaulting the deceased, however he stated that he saw the occurrence from a distance of about 40 yards.

8. PW-3 is the informant Kanti Devi is the wife of the deceased. In her evidence she stated that she reached at the place of occurrence on hearing hulla from the side of the River and when she reached there alongwith her "Bhaisur" and her son, she saw some persons were assaulting her husband and amongst assailants, she could identify these accused respondents. She further stated that her husband was lying on the ground and when he asked for water, she tried to give him water but the accused Bishwanath Manjhi started abusing her. .

9. The other witnesses examined on behalf of the prosecution, i.e. PW-4 Dukhan Manjhi, PW-6 Kesho Mahto and PW-7 Ashok Manjhi, were tendered in his evidence, whereas PW-5 Geeta Devi was a hear say witness, PW-8 Anil Manjhi was a witness of seizure, whereas PW-9 was Dr. K.D. Singh, who held Post Mortem examination of the dead body of the deceased and PW-10 was the Investigating Officer.

10. From the allegations made in the FIR, it appears that the informant alleged that she heard hulla that a thief was caught and beaten by the villagers near the bank of Dhobai River, upon which she with her family members rushed to that place and there she found her husband lying in injured condition but in her evidence in Court, she has completely given goby to the story of thief as stated in the FIR. As already noticed above, in her evidence she stated that she heard hulla upon which she alongwith her family members went to the place of occurrence and found that the accused persons were assaulting her husband Ganesh, who was lying on the ground. The story of thief and the presence of the villagers at the place of occurrence have totally been omitted by the informant in her evidence from which it can very well be inferred that she has deliberately attempted to suppress the real fact and about the presence of the independent witness at the place of occurrence.

11. From the evidence and materials on record it further appears that the place of occurrence is said to be a lonely place, i.e. the bank of Dhobai River and the time of occurrence is about 8-9 p.m., that also in the month of November, i.e. in a winter season. At that time it must be dark. The prosecution has not disclosed about the presence of any light at the place of occurrence which can be said to be the source of identification of the accused persons by the witnesses at the place of occurrence. There is nothing on the record to show that there was any source of light at the place of occurrence, in which the prosecution witnesses could witness the whole alleged occurrence and they could identify the accused persons.

No doubt, the evidence of the eyewitnesses can not be rejected solely on the ground that they are the close relatives of the deceased but at the same time, in our view, when a large number of independent witnesses were present at the place of occurrence then in that case it was necessary for the prosecution to examine any of the independent witness, who was present at the place of occurrence in order to support the prosecution case. The evidence of the eyewitnesses, who are close relatives, becomes doubtful in view of the fact that admittedly both the parties were on inimical terms. No reason has been assigned by prosecution as to why the villagers, who were present at the place of occurrence at the time of alleged occurrence, were not examined. The evidence of the eyewitnesses also becomes doubtful since PW-1 has stated in her evidence that when he reached at the place of occurrence, he found the deceased lying on the ground. In such a situation, it can very well be inferred that this witness did not see the actual assault made by some persons and he could see only that the injured was lying on the ground.

12. Similarly, the informant, in her evidence, has stated that when she reached at the place of occurrence, she saw some persons were assaulting her husband and amongst the assailants, she could identify these accused respondents. Therefore, it can very well be said that there were several other persons also who assaulted the deceased. Who were they; this question remained unanswered by the prosecution.

13. In view of the above discussions, we are of the view that the evidence of eyewitnesses, i.e. PWs 1 to 3 cannot be said to be wholly reliable and from their evidence, two views are clearly possible. It may be that some other persons were involved in assault of the deceased but the said fact has been suppressed by the prosecution. We also find that the story of theft as well as presence of the villagers at the place of occurrence, as alleged in the FIR, has been completely given go by, by the prosecution in course of trial for the reasons best known to it. This also raises serious doubt in the veracity of the prosecution case. Therefore, we come to the conclusion that the learned trial court rightly acquitted the accused respondents from the charges leveled against them. We do not find any merit in this appeal. Accordingly, the same is hereby dismissed.