

(1986) 10 OHC CK 0007

In the Orissa High Court

Case No : Government Appeal No. 100 of 1982 and Criminal Appeal No. 302 of 1982

State of Orissa

APPELLANT

Vs

Bachan Chhatar and Others
 Gagan Chhatar and
Others Vs State of Orissa

RESPONDENT

Date of Decision : 07-10-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Penal Code, 1860 (IPC) — Section 307, 326, 34

Citation : (1987) 64 CLT 199

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : Jairaj Behera, Addl. Standing Counsel. in Govt. Appeal No. 100 of 1982 and C.R. Nanda, in Criminal Appeal No. 302 of 1982, for the Appellant; C.R. Nanda and Jairaj Behera, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—Both the appeals arise out of the same judgment passed by the learned Assistant Sessions Judge, Bargarh. They were heard together and are disposed of by this judgment

2. The prosecution case is narrated in brief. P. W. 4 the victim of the assault and the informant and the Respondents in the Government Appeal, four of whom are the Appellants in the Criminal Appeal, are Harijans and belong to village Jampali within Bijepur Police Station of Sabalpur district. The occurrence took place on 24-1-1981 at about midday. P. W. 4 was returning home from the tank after taking his bath. Because he had some previous dispute with the Respondents he avoided the lane passing through the Harijan Para and went behind it. His sons-in-law (P. Ws. 3 and 8) who were also accompanying him, however, went through the lane. At that time the Respondents being armed with Tangias and lathis surrounded and attacked him. Respondent Gagan assaulted P. W. 4 on the head by means of a Tangia (M. O. I). Respondent Kirati dealt a blow by means of

Barshi (M.O.II) on his right leg below the knee. Respondent Markanda thrust a lathi (M.O.V) on his chest several times. Respondent Biranchi assaulted him on the left arm and other parts of the body by a weapon resembling a lathi (M. O. III). Respondents Jibardhan and Bachan instigated the other Respondents to do away with his life. The assault was witnessed by P. Ws. 3, 6 and 8. As a result of the severe assault P. W. 4 received grievous bleeding injuries, as well as, fracture and was first treated at Bijepur Public Health Centre and was then moved to the V.S. S. Medical College Hospital, Burla where treatment was given to him till his recovery four months after. On the basis of the F. 1. R. (Ext. 2) given by P. W. 4 investigation was carried and after completion thereof charge-sheet was submitted against the Respondents for offences under Sections 307 and 326 read with Section 34 of the Indian Penal Code (1. P. Co" for short).

3. The learned Assistant Sessions Judge framed charges against the Respondents for having committed -offences under Sections 307 and 326 read with Section 34, Indian Penal Code. The plea of the Respondents was that on account of previous enmity a false case was foisted against them.

4. The learned Assistant Sessions Judge found that the prosecution evidence against Respondents Bachan and Jibardhan was so meagre that the charges could not be established against them. Therefore he acquitted them. With regard to the other Respondents he held that an offence u/s 324 read with Section 34, Indian Penal Code was proved against them. Therefore, he convicted them under the aforesaid Section and sentenced each of them to pay a fine of Rs. 3001-, in default, to undergo simple imprisonment for three months. He directed payment of compensation of Rs. 300/- to P. W. 4 out of the fine if realised. Consequently he acquitted them of the charge under Sections 307 and 326 read with Section 34, I.P.C.

5. P. W. 1 the Medical Officer of Bijepur Public Health Centre examined the injured on 24-1-1981 at 4. p. m. and found the following injuries on his person:

(1) An incised looking" lacerated injury on the frontal aspect of the scalp. It was "Y" shaped. Its size was 9 cm x 3 cm x 1 cm. He reserved his opinion as to the nature of the injury but opined that it could have been caused by a blunt weapon such as a dub or lathi.

(2) An incised looking lacerated wound on the occipital region. Its size was 7.5 cm x 15 mm x 8 mm. According to his opinion the injury could have been caused by .a blunt weapon like club. The opinion as to nature of the injury was reserved.

(3) Compound fracture of tibia of the right leg. The skin of the sub-cutaneous tissue was cut causing injury. The size of the injury was 3? cm x 2 cm. The bone was protruding .outside 5 cm below the knee joint. According to his opinion the injury was grievous and could have been caused by a sharp cutting weapon.

(4) Multiple bruises on different parts of the body which could have been caused by a blunt weapon like dub. The bruises were simple in nature.

All the injuries according to him were caused within twenty-four hours. His report was marked Ext.1, P.W. 2 was the Registrar of the Department of Surgery in V.S.S. Medical College Hospital. Burla. He examined the injured on 26-1-1981 at 10 a. m. and found the following injuries:

(1) A compound fracture of both tibia and fibula of the right leg with haemorrhage. The wound was incised looking of the size of 3" x 2" X 2". It appeared grievous in nature, and could have been caused by a sharp instrument.

(2) An incised looking wound on the left parietal region on posterior aspect. Blood was oozing. The size was 3" x 1" x ?". It was simple in nature and could have been caused by a sharp instrument.

(3) An incised looking wound on the parietal aspect on the mid line in front of the hair line. The size was 1" x 1" x ?". It was simple in nature and could have been caused by a sharp instrument.

(4) An abraisement of the size of 3" x 1/8" "x 1/8" on the left arm. It was simple in nature and could have been caused by a sharp instrument.

(5) An abrasion of the size of 1" X 1/8" X 1/8" on the right side of the chest. It was simple in nature. The injury could have been caused by a sharp instrument. The injured was admitted as an in-door patient for treatment. According to his opinion the injuries were probably a day old.

His right leg was examined by X-ray and after examination it was found that there was compound fracture as already reported. The report of the Medical Officer is marked" as Ext. 3. The opinion of the Medical Officer unmistakably shows that P. W. 4 had sustained simple, as well as, grievous injuries which could have been caused by blunt and sharp cutting weapons as a result of assault.

6. The learned Counsel appearing for the Respondents in support of the Criminal Appeal preferred by them raised the following contentions:

(1) Prior to recording and registering the F. I. R. (Ext. 2) a station diary entry was made at Bijepur Police Station with regard to the occurrence. The station diary entry should have been treated as the first information and as it was not proved by the prosecution, it was guilty of suppression of material facts for which the case should be viewed with suspicion.

(2) The injury report given by P.Ws.1 and 2 were earlier to the requisitions sent to them by the investigating officer. This was a suspicious circumstance lending doubt into the prosecution case.

(3) Independent witnesses and other material witnesses were not examined by the prosecution. On the other hand, interested and relation witnesses were examined. Therefore, the prosecution case cannot be said to have been established beyond reasonable doubt.

The learned Additional Standing Counsel not only supported the prosecution case

and evidence, but also urged that it was a clear case Sections 307 and 326 read with Section 34, Indian Penal Code against all the Respondents who should be convicted accordingly.

7. In support of his first contention, learned Counsel for the Respondents placed reliance upon the statements made by the investigating officer (p.w.9) in his cross-examination to the following effect :

On 24-1-1981 a station diary entry being No. 468 was made by L. C., H. N. Behera and it was prior to the F. I. R.. The extract of S. D. was not supplied to the accused nor it is in case record.

The certified copy of the station diary entry was neither produced by the Respondents nor was the original called for. It was not further elicited from the investigating officer as to whether the station diary entry related to this particular occurrence or it related to some other incident. It was also not asserted who was the author of the station diary entry. It is quite clear that the statements are vague and do not at all give a clear picture of the nature of the station diary entry, the maker of it and the incident or occurrence to which it related. The question whether a particular information amounts to F. I. R. or not is essentially a question of fact depending upon the circumstance of each case. A vague or indefinite information which does not make it incumbent on the police to start investigation is not an information within the meaning of Section 154 of the Code of Criminal Procedure ("Code" for short) and as such the subsequent regular F. I. R. cannot be held to be inadmissible u/s 162 of the Code see the State v. Narasingha Khuntia 37 (1971) C.L.T. 812. It is the officer in charge of the police station who has the authority to record F. I. R. Information given to A. S. I. is not F. I.R., much less information given to a literate Constable. See State Vs. Dwari Behera and Others, .

It is true that according to the principle laid down by the Supreme Court in Sevi and Another Vs. State of Tamil Nadu and Another, , suppression of first information to the police officer will give rise to suspicion as to the truth of the prosecution case. But in this case, as stated above, there is no specific and definite evidence that the station diary recorded by a literate Constable at Bijepur Police Station on 24-1-1981 related to this particular occurrence. This being the position no adverse inference can be drawn against the prosecution case, nor can it be characterised as suspicious or doubtful. The first contention in my opinion is without merit.

8. Now the second contention: P. W. 1 the Medical Officer of the Public Health Centre of Bijepur examined the injured at 4 p. m. on 24-1-1981 and gave his report (Ext. 1). The investigating officer examined the injured at 9 p.m. on the same day and then registered the F. I. R.. P. W. 2 the Registrar in the Department of Surgery of the V.S. S. Medical College Hospital, Burla examined the injured at 10 a. m. on 26-1-1981 and gave his report (Ext. 3). But the requisition was signed by the investigating officer on 5.3-1981. Thus on the face

of it, it is incongruous that P. W. 1 had examined the injured before the F.I. R. was registered at Bijepur police Station and he was further examined at the V.S.S. Medical College Hospital, Burla before the requisition for such examination was given. But as a matter of fact, I find no incongruity nor any suspicious circumstance in the matter of examination of the injured. On the date of occurrence the investigating officer (P. W. 9) was not present at the police station and he returned late in the evening and so he recorded the statement of the injured and registered the F. I. R. (Ext. 2) at 9 p. m. on 24-1-1981. Prior to his return to the police station the injured had been admitted in the Public Health Centre, Bijepur for treatment. The injured required immediate treatment which could not await till the return of the investigating officer to the police station. Similarly, when it was found necessary to remove the injured to the V.S. S. Medical College Hospital, Burla for better treatment it was done and in course of investigation the requisition was issued later. Formalities during investigation were not as important as the treatment of the injured. The evidence of P. Ws. 1 and 2 who are responsible medical officers cannot be disbelieved. So it was true that the injured was examined and treated by the medical officers at both places. If there was delay in complying with the formalities by the investigating officer the fact of the injured being treated cannot be disbelieved. For that matter the prosecution case that the injured sustained injuries as reported by both the medical officers cannot be viewed with suspicion. The second contention is also without merit.

9. Now coming to the third contention? it is at the outset necessary to point out that a relation witness is not necessarily an interested witness. "Related" is not equivalent to "interested". Natural witnesses who were present at the time of the occurrence cannot be called interested, see *State of Rajasthan Vs. Smt. Kalki and Another*, . As a matter of caution, however, evidence of relation witnesses should be examined with care. There is no rule of P.w that evidence of relation witnesses should be outright discarded. If the evidence of relation witnesses after proper scrutiny is found to be truthful and reliable, there is no reason why the same should not be believed in support of the prosecution case.

In this case the injured (P. W. 4) in his evidence has given ;\\ vivid account as to how he was assaulted by the Respondents by means of sharp cutting dangerous weapons and lathis. His evidence has been corroborated by the evidence of P. Ws. 3, 6 and 8. Out of them P. Ws. 3 and 8 are his sons-in-law. It appears from their evidence that they came to visit the house of their father-in-law (P. W. 4) on account of the Sradha ceremony of their mother-in-law. On the date and time of the occurrence all three of them had gone to the village tank to take bath. While returning they passed through the village lane whereas, P. W. 4 avoided the same and took a different route in order to avoid the houses of the Respondents. When they heard the cries of P. W. 4 they rushed and found the Respondents assaulting P. W. 4. P. W. 6 was a hawker and had come to the Harijana para for sale of cloth. He stated about the assault and particularly named the Respondents who dealt, strokes on P. W. 4 by means of the sharp

cutting weapons and lathis. It was not elicited from his cross-examination that he was either inimical towards the Respondents or he was friendly with P. W. 4. He was undoubtedly an independent witness who happened to be present at the time of the occurrence. It is true that P. W. 4 and the Respondent held previous land dispute. But after close scrutiny of the evidence of p: ws. 3, 4, 6 and 8 it cannot but be held that they were truthful and reliable. There is no reason to discard their evidence. Therefore, the learned Assistant Session Judge was correct in his assessment and conclusion that the Appellants of the Criminal Appeal were assailants of P. W. 4. He was also right in holding that two of the Respondents namely, Bachan Chhatar and Jibardhan Chhatar did not take part in the assault. The third contention has equally no force.

10. The next question for consideration is the offence that was committed by the Appellants in the Criminal Appeal who are Respondents in the Government Appeal. Considering the evidence on record relating to the circumstance of the assault and the injuries sustained by P.W. 4 the learned Assistant Sessions Judge was justified to hold that it was not a case u/s 307, Indian Penal Code. He was, however, not correct, to say that this was a case u/s 324, Indian Penal Code because P. W. 4 had sustained a grievous injury according to the report of P. W. 2. The proper penal Section under which the Appellants in the Criminal Appeal should have been convicted is Section 326 which provides punishment for voluntarily causing grievous hurt by dangerous weapons. In this case, the Appellants used dangerous weapons, such as, Tangia (M. O. I) and Barshi (M. O. II) as well as lathis. P. W. 4 had compound fracture of the right leg which was a grievous hurt. Therefore, in the facts and circumstances of the case, it would be proper to convict the Appellants of the Criminal Appeal who are Respondents of the Government Appeal having committed offences u/s 326 read with Section 34, Indian Penal Code As to the sentence, if the Appellants of the Criminal Appeal are sentenced to undergo imprisonment for the period already undergone and to pay a fine of Rs. 300/- each in default, to undergo rigorous imprisonment for three months each, the ends of justice can be served. .

11. For the foregoing reasons the Criminal Appeal is dismissed and the Government Appeal is allowed in part. The order of conviction and sentence of the Respondents Gagan Chhatar, Markanda Chhatar, Kirati Chhatar and Biranchi Chhatar is altered. They are convicted u/s 326 read with Section 34, Indian Penal Code and are sentenced to undergo imprisonment for the period already undergone. They are further sentenced to pay a fine of Rs. 300/- each in default to undergo rigorous imprisonment for three months each. Out of the fine amount realised, if any, a sum of Rs. 300/- shall be paid to Indra Chhatar (P.W. 4) as compensation. The Government Appeal is dismissed against Respondents Bachan Chhatar and Jibardhan Chhatar.