

(2015) 10 JH CK 0019

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) Nos. 723 and 709 of 2005

Sudhir Rajak and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 26-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 323, 324, 325

Citation : (2015) 4 JLJR 694

Hon'ble Judges : Rakesh Ranjan Prasad and Pramath Patnaik, JJ.

Bench : Division Bench

Advocate : Gautam Kumar and D.K. Jaiswal, Advocates, for the Appellant; V.K. Tiwary, A.P.P., for the Respondent

Judgement

1. Both the criminal appeals, since arising out of the same case, were heard together and are being disposed of by the common judgment.

2. All the aforesaid three appellants were put on trial on the accusation of committing murder of one Lalan Yadav in furtherance of their common intention. They were also charged for causing grievous injuries to the informant-Mahendra Yadav (P.W.6). The trial court having found all three appellants guilty of the charges convicted them for the offences punishable under Section 323, 326/34, 341/34 and 302/34 of the Indian Penal Code vide its judgment dated 18.3.2005 passed in Sessions Trial No. 246 of 2003 and sentenced each of them to undergo rigorous imprisonment for life for the offence under Section 302/34 of the Indian Penal Code vide order dated 21.3.2005. However, no sentence was awarded for the offences punishable under Sections 326, 323 and 341 of the Indian Penal Code.

3. The case of the prosecution, as has been made out in the fardbeyan (Ext.4) of the informant-Mahendra Yadav (P.W.6), is that on 4.11.2002 at about 8pm while the deceased-Lalan Yadav in a way to his house reached near the house of the appellant-Sudhir Rajak, the appellant-Sudhir Rajak asked for money from Lalan

Yadav (deceased) for playing gamble which the deceased-Lalan Yadav refused to part with. Thereupon, appellant-Sudhir Rajak and his brothers namely, Firangi Rajak (absconded) and Sunil Rajak, as well as his father-Meghnath Rajak assaulted Lalan Yadav (deceased) with lathi, farsa etc. during which course Lalan Yadav (deceased) received injuries over his head and fell down on the ground. Seeing this, when informant-Mahendra Yadav (P.W.6) came there to rescue his brother-Lalan Yadav, he was also assaulted as a result of which, he also sustained injury. Meanwhile, several persons assembled there and then the accused persons fled away from there.

4. Thereupon, the informant-Mahendra Yadav (P.W.6) and other persons namely, Yamuna Yadav (P.W.4), Nand Lal Yadav (P.W.2), Roshan Lal Yadav (P.W.3) and Rameshwar Yadav (P.W.5)-father of the deceased, brought Lalan Yadav to his house from where he was taken to Peterwar Primary Health Centre where first aid was given to him and then the hospital authority asked them to take Lalan Yadav (deceased) to RMCH, Ranchi where Lalan Yadav was taken but on 5.11.2002 he died.

While the deceased-Lalan Yadav had been taken to Peterwar hospital an OD slip was issued to Peterwar police station. On receiving the OD slip, one Harendra Prasad Singh (P.W.9) posted as Sub Inspector of Police, Peterwar police station, came to the hospital where he recorded the fardbeyan (Ext 4) of Mahendra Yadav (P.W.6) upon which the case was registered under Sections 341, 323, 324, 325 and 307/34 of the Indian Penal Code against the appellants as well as Firangi Rajak. When the injured-Lalan Yadav was taken to Peterwar hospital, he was examined by Dr. P.N. Prasad (P.W.7) who did notice the following injuries on the person of Lalan Yadav :-

- "a. sharp cutting wound on the left side on the left parietal bone which is about 2" x 1/2" x bone deep.
- b. sharp cutting wound on the right side on the right parietal bone which is about 2" x 1/2" x bone deep.
- c. sharp cutting wound on occipital region which is about 3/4" x 1/2" x bone deep.
- d. scratching on posterior aspect of left upper arm near elbow joint which is about 1" x 1/4".

The doctor did not express his opinion over the nature of injury. However, when Lalan Yadav succumbed to his injuries on 5.11.2002, the Investigating Officer sent a requisition before the court concerned for adding Section 302/34 of Indian Penal Code which was accordingly allowed. Meanwhile, the Investigating Officer held inquest on the dead-body of the deceased and prepared an inquest report and sent the dead-body for postmortem examination which was conducted by Dr. Tulsi Mahto-P.W.8 who upon holding autopsy on the dead-body of the deceased found the following injuries on the person of the deceased:-

"Externally

(A) Abrasion

i. 2cm x 1/4" and 1-1/2" x 1" one the left forearm back middle part.

(B) Lacerated wound stitched un-united

i. 7cm long on the left fronto parietal region of head situated anterior posteriorly.

ii. 5cm long on the right fronto parietal region of head situated anterior posteriorly.

iii. 3cm long on the right parietal eminence of the head.

Internally

There was diffuse contusion of left fronto parieto temporal skull and right parietal scalp. There was a crack fracture of left temporo parietal bone with separation of left side of coronal suture. There is contusion of brain and presence of subdural blood and blood clot over both sides of brain."

5. The doctor issued postmortem examination report (Ext.3) with an opinion that the death occurred on account of head injury which was caused by hard and blunt substance. However, the doctor in his cross-examination has testified that the injury may be caused by sharp cutting weapon or hard blunt substance.

Meanwhile, the Investigating Officer also took the statements of the witnesses.

6. On completion of the investigation, when the charge-sheet was submitted against these appellants showing one of the accused-Firangi Rajak as absconder, cognizance of the offences was taken against these appellants and in due course when the case was committed to the Court of Sessions, these appellants were put on trial.

7. During trial, the prosecution in order to prove its case examined as many as 9 witnesses. Of them, P.W. 2-Nand Lal Yadav, P.W.3-Roshan Lal Yadav, P.W.4-Yamuna Yadav and P.W. 6-Mahendra Yadav are the eye witnesses, whereas P.W.5-Rameshwar Yadav, father of the deceased, is a hearsay witness. P.W.1-Md. Rizwan Ahmad is the owner of the vehicle by which the deceased was carried to the hospital. According to P.W.2-Nand Lal Yadav and P.W.3-Roshan Lal Yadav, while they were in the shop of Laxman, they saw Lalan Yadav coming towards his house and when he reached near the house of the appellant-Sudhir Rajak he asked for money from him for playing gamble to which Lalan Yadav refused to part with. Upon it, appellant-Sudhir Rajak started assaulting. Meanwhile, other appellants namely, Sunil Rajak and Meghnath Rajak, and one Firangi Rajak (absconded) also came there variously armed and assaulted the deceased as a result of which the deceased sustained injuries over his head and fell down on the ground. Meanwhile, P.Ws. 2 and 3 and others as well as the father of the deceased came there and then took the deceased to his house from where they brought the deceased to Peterbar hospital where the deceased was examined by

Dr. P.N. Prasad (P.W.7) and then he was taken to RMCH, Ranchi where he succumbed to his injuries. They also testified that while the deceased was being assaulted, the informant-Mahendra Yadav (P.W.6) also reached there to rescue his brother and in that course, he was also assaulted over his head as a result of which he also sustained injuries. P.W.4-Yamuna Yadav and P.W.6-Mahendra Yadav (informant) have also testified that when Lalan Yadav reached near the house of appellant-Sudhir Rajak, he asked money from Lalan Yadav (deceased) for playing gamble which the deceased refused to part with and then a verbal altercation ensued during which appellant-Sudhir Rajak, as per the evidence of P.W.4-Yamuna Yadav, went inside the house and brought a farsa with him. Other appellants also came out of the house variously armed. As per the FIR, appellant-Sudhir Rajak was armed with "tabla" whereas the appellants-Meghnath Rajak and Sunil Rajak were armed with "lathi" and "bhujali" respectively. However, as per Mahendra Yadav (P.W.6), the appellant-Sudhir Rajak came out with "farsa", accused-Firangi Rajak (absconded) came out with "tabla" and appellants-Sunil Rajak as well as Meghnath Rajak came out with "lathi". He has also testified that it was appellant-Sudhir Rajak who assaulted the deceased on his head with "farsa" and then other persons assaulted the deceased with the other weapon as a result of which, deceased-Lalan Yadav sustained injuries over his head and fell down on the ground. Thereupon, Lalan Yadav (deceased) was taken to Peterwar hospital from where he was taken to RMCH, Ranchi where he succumbed to his injuries.

8. After closure of the prosecution case, when the appellants were questioned under Section 313 of Cr.P.C. over the incriminating evidences/materials appearing against them, they denied. However, the appellants seem to have taken defence, as has been suggested to the witnesses, that the deceased had lost the money to the appellant-Sudhir Rajak in the gamble and hence he wanted that appellant-Sudhir Rajak should return the money which appellant-Sudhir Rajak did not agree and that led to altercation in between appellant-Sudhir Rajak and the deceased during which the deceased fell down on the ground over the pieces of bricks and sustained injuries over his head. In support of such stand, appellant-Sudhir Rajak examined himself as D.W.1.

9. Thereupon the trial court having placed its implicit reliance on the testimonies of P.Ws. 2, 3, 4 and 6, the eye witnesses, getting corroboration from the medical evidence, did find the appellants guilty and accordingly recorded the judgment of conviction and order of sentence against the appellants, which is under challenge.

10. Mr. Gautam Kumar, learned counsel for the appellants, submits that none of the eye witnesses is consistent on the point of the manner of occurrence suggesting therein that they had not seen the occurrence and still claimed to have seen the occurrence and hence their testimonies are not worth reliable. Still the trial court placed its reliance on their testimonies and hence it committed illegality in recording the judgment of conviction and order of sentence against the appellants.

In this regard, it was submitted that all the witnesses are at variance on the point of weapon which the appellants were holding. Some of the eye witnesses have testified that the appellants were holding "tabla", "farsa", "lathi" and "bhujali" whereas the other witnesses have testified that the appellants were holding "farsa", "bhujali" and "lathi" and that P.Ws. 2 and 3 are not specific about the role which was played by each of the appellants which is suggestive of the fact that they may not have seen the occurrence.

Further submission, which was advanced on behalf of the appellants, is that as per the case of the prosecution, appellant-Sudhir Rajak did assault the deceased-Lalan Yadav, as the deceased had refused to part with money which appellant-Sudhir Rajak had asked for playing gamble but so far the appellants Meghnath Rajak and Sunil Rajak are concerned, they were admittedly not the parties to act of demanding money from the deceased and as such the question of sharing common intention by them in committing murder of the deceased does not arise. Furthermore, appellants-Meghnath Rajak and Sunil Rajak though have been alleged by the witnesses to have assaulted the deceased-Lalan Yadav by "lathi" but no such corresponding injuries have been found by the doctor and thereby the testimonies of the witnesses to the effect that those appellants did assault the deceased, are not worth acceptable but the trial court did not take into account all these aspects of the matter and convicted the appellants-Meghnath Rajak and Sunil Rajak and thereby it committed illegality in recording the judgment of conviction and order of sentence against them, which is fit to be set aside.

11. As against this, learned counsel for the State as well as the informant, submit that it is true that appellants- Meghnath Rajak and Sunil Rajak may not have initial altercation with the deceased but they along with appellant-Sudhir Rajak, as per evidences of the eye witnesses, did assault the deceased on account of which the deceased sustained injuries over his head which was proved to be fatal and thereby the trial court was absolutely justified in recording the judgment of conviction and order of sentence against the appellants which never warrants to be interfered with by this Court.

12. Having heard learned counsel for the parties and on perusal of the records, we do find that it is the case of the prosecution, as has been testified by all the eye witnesses i.e. P.W. 2-Nand Lal Yadav, P.W.3-Roshan Lal Yadav, P.W.4-Yamuna Yadav and P.W. 6-Mahendra Yadav, that on the day of Diwali while the deceased-Lalan Yadav was returning home and reached near the house of the appellant-Sudhir Rajak, who was standing in front of his house, asked money from the deceased-Lalan Yadav for playing gamble to which Lalan Yadav refused to part with. That led altercation in between the appellant-Sudhir Rajak and Lalan Yadav (deceased). As per P.W.4-Yamuna Yadav, appellant-Sudhir Rajak went inside the house and brought a "farsa" with him. Other appellants namely, Meghnath Rajak and Sunil Rajak also came out of the house with "lathi" and "bhujali". However, according to P.W.6-Mahendra Yadav, appellants-Sunil Rajak and Meghnath Rajak

came out with "lathi". All these appellants as well as accused Firangi Rajak (absconded) did assault Lalan Yadav (deceased). P.Ws. 2 and 3 in their testimonies have not specifically testified as to who by what weapon did assault the deceased. However, P.Ws. 4 and 6 have specifically testified that appellant-Sudhir Rajak had given "farsa" blow over the head of the deceased. P.W. 6 has testified that appellants-Sunil Rajak and Meghnath Rajak did assault the deceased with "lathi" over his hands as a result of which the hands of the deceased got broken and when P.W.6-Mahendra Yadav went to rescue his brother-Lalan Yadav, he was also assaulted by the accused-Firangi Rajak with "tabla" as a result of which he sustained injury over his head. Thus, from the testimonies of P.Ws. 4 and 6, it is evident that it was appellant-Sudhir Rajak who did assault the deceased-Lalan Yadav over his head with "farsa". According to P.W.6-Mahendra Yadav, it was appellant-Sudhir Rajak who had given two or three blows on the head of the deceased with "farsa". P.Ws. 7 and 8, both the doctors, have also found three injuries over the head of the deceased. According to P.W.7-Dr. P.N. Prasad, three injuries over the parietal occipital had been found which were in the nature of sharp cutting wound, whereas according to P.W.8-Dr. Tulsi Mahto, who had held autopsy on the dead-body of the deceased, those three injuries were in the nature of laceration. However, P.W.8-Dr. Tulsi Mahto in course of cross-examination did clarify that those injuries can be caused by sharp cutting weapon and also by hard and blunt substance.

13. Thus, we do find that the testimonies of P.Ws. 4 and 6 and also the P.Ws. 2 and 3 get corroboration from the medical evidences so far appellant-Sudhir Rajak is concerned and thereby we do find that the trial court was absolutely justified in recording the judgment of conviction and order of sentence against appellant-Sudhir Rajak for committing murder of the deceased-Lalan Yadav.

14. So far appellants-Meghnath Rajak and Sunil Rajak are concerned, we have already noted that P.W.6-Mahendra Yadav is quite categorical in his testimony that it was appellant-Sudhir Rajak who had given "farsa" blow on the head of the deceased-Lalan Yadav. However, P.W.6-Mahendra Yadav has also testified that appellants-Meghnath Rajak and Sunil Rajak, who were having "lathi", did assault the deceased over his hands as a result of which, the hands of the deceased got fractured but that testimony never gets corroboration from the medical evidence as neither P.W. 7 nor P.W. 8 did find the hands of the deceased being fractured. Moreover, appellants-Meghnath Rajak and Sunil Rajak may not have any grievance or grudge with the deceased, as according to the case of the prosecution, it was appellant-Sudhir Rajak who had asked for money from the deceased who refused to part with the money. At that point of time, appellants-Meghnath Rajak and Sunil Rajak were never present and as such, we do not find any reason for them to participate in the occurrence and to assault the deceased.

15. Under the circumstances, the testimonies of the eye witnesses to the effect that appellants-Meghnath Rajak and Sunil Rajak did assault the deceased, are not believable and hence, their testimonies are not worth acceptable to that

extent. Accordingly, appellants-Sunil Rajak and Meghnath Rajak seem to have wrongly been convicted and hence the order of conviction and sentence is hereby set aside. Consequently they are acquitted of all the charges.

16. So far as appellant-Sudhir Rajak is concerned, he, in the facts and circumstances, as has been stated above, is convicted for the offence under Section 302 of the Indian Penal Code instead of Section 302/34 of the Indian Penal Code. So far as other offences, under which appellant-Sudhir Rajak has been convicted, are concerned, those offences in view of the testimonies of the witnesses do not appear to have been proved and accordingly, appellant-Sudhir Rajak is also acquitted of the charges under Sections 341, 323 and 326 of the Indian Penal Code.

17. Consequently, appellants-Meghnath Rajak and Sunil Rajak are discharged from the liabilities of their bail bonds.

18. Thus, Cr. Appeal (D.B.) No. 709 of 2005 stands allowed whereas Cr. Appeal (D.B.) No. 723 of 2005 stands dismissed with the modification as indicated above.