
(2009) 03 JH CK 0024
In the Jharkhand High Court

Sukhdeo Kumhar and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2009) 03 JH CK 0024

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—This appeal is directed against the judgment of conviction dated 12.6.1995 and order of sentence dated 17.6.1995 passed by Shri Dilip Kumar Sinha, 2nd Additional Sessions Judge, Hazaribag in Sessions Trial No. 90 of 1990 against the eight appellants by which the three appellants namely Sukhdeo Kumhar, Ramdas Kumhar and Kalal Kumhar have been found guilty under Sections 307/149 of the Indian Penal Code and sentenced them to undergo R.I. for six years. Further the learned trial court also found all the eight appellants guilty u/s 148 of the Indian Penal Code and sentenced them to undergo R.I. for two years with the exception of appellant Prayag Kumhar who has been released u/s 360 Cr.P.C. on execution of bond of Rs. 2000/- for a period of two years and was directed to maintain peace and be of good behaviour.

2. The prosecution case was earlier registered under the fardbeyan of the informant, Mohammad Safi, P.W.1 who has stated that on 22.9.1988 at about 6.30 a.m. he had gone to attend the call of nature near Bandhua Patra, west to the house of Shiv Narayan Sao. Then all the eight appellants came there variously armed with "pharsa" , "lathi" and arrow surrounded the informant and started assaulting him. The appellants namely Sukhdeo assaulted him on the head and Ramdas assaulted on the arm. The informant fell down and hearing hulla witness, Jalaluddin(P.W.7), Sundar Singh and Nasimuddin came and saved hi. He has stated that the occurrence took place due to land dispute. The accused persons had came there with intention to commit his murder. He was

brought to the hospital . He has stated that in the hospital his brother Ashiq and nephew Bilal came in injured condition. They were given first Aid by the doctor in his presence and referred to R.M.C.H, Ranchi. The fardbeyan was also signed by the witness, Nasimuddin. The police after investigation of the case submitted the charge sheet under Sections 147, 148, 149, 307, 324, 323, 341 of the I.P.C against the accused persons. The learned Magistrate after taking cognizance of the offences committed the case to the court of Sessions since the case was exclusively triable by the court of Sessions.

3. Prosecution in order to bring home the charges against the appellants examined as many as 12 witnesses, out of whom P.W.1 Md. Safi is the informant of the case. P.W.2 , Md. Bilal Ansari is the injured witness. P.W.3 is Md. Ashiq, another injured. P.W.4 is Md. Israil. P.W.5 is Safayat Hussain. P.W.6 is Nasimuddin. P.W.7 is Jalaluddin. P.W.8 is Doctor Bijay Prasad Ram, P.W.9 is Sultan Safi, P.W.10 is Nagendra Mahto, tendered witness, P.W.11 Doctor Madhukar S. Bhatt and P.W.12 is Moti Ram.

4. After hearing both the parties and going through the evidences, the learned trial court found the accused persons guilty as aforesaid and sentenced them as stated above.

5. It is submitted by the learned Counsel for the appellants that there is contradiction with regard to the place of occurrence, manner of occurrence as also there is contradiction between the evidences of the eye witnesses and the injuries found by the doctor. It is further submitted by the learned Counsel for the appellants that since the Investigating Officer has not been examined in the instant case, the contradictions put by the witnesses could not be taken by the defence which has prejudiced the defence. He has relied upon decisions report in " 2007 Eastern India Criminal Cases vol 1 page 146 in Satendra Kumar Gupta v. State of Bihar" and 2005 3 EICC 288 in Johan Yadav and Ors. with Shyam Yadav @ Shyam Prasad Yadav v. State of Bihar". He has also relied upon the decision "1994 2 EICC(SC) 535 in Jadu Yadav and Ors. v. State of Bihar" for the purpose that if there is discrepancy between the medical evidence and the ocular evidence then the prosecution case will become doubtful and accordingly the learned Counsel for the appellant has submitted that the charges leveled against appellants has not been proved beyond reasonable doubt and false case has been implicated due to previous enmity between the parties.

6. On the other hand learned Counsel for the state has submitted that there is no discrepancy in the place of occurrence or the manner of occurrence and after considering everything learned trial rightly convicted the three appellants u/s 307/149 and also convicted all the eight appellants u/s 148 of the I.P.C.

7. After hearing both the parties and after going through the records I find that the prosecution case has to be examined in the perspective of the fact that the occurrence took place at two places, 1st occurrence is assault on the informant at Bhandwapatra tank near the house of Shiv Narayan Sao . The second

occurrence is the assault of informant's brother and nephew namely Bilal and Ashiq. The witnesses with regard to the assault at the first place of occurrence are P.W.1, 4,5 and 6 and the witnesses with regard to the second part of the occurrence are P.W.2,3,4 and 5. Apart from that the doctors, P.W.8 and P.W.11 and except the above witnesses, P.W.5 Jalaluddin is a tendered witness. P.W.9 and 10 are formal witnesses who proved the seizure of the blood stained earth. P.W.12 is also a formal witness proved the F.I.R.

8. I will first consider the evidence of P.W.1, 4, 5 & 6 with regard to the first occurrence of assault on the informant P.W.1, Md. Safi. P.W.1 has stated in his evidence in the court that on the date of occurrence i.e. 22.9.1988, Thursday at about 6.30 a.m. he had gone for natural call at Bandhwa Patra. When he reached near the house of Shiv Narayan Sao then the accused Sukhdeo, Ramdas, Kala, Chedilal, Rigna @ Basudeo, Suresh etc. came there. He has stated Sukhdeo, Kalal, Lalo, Ramdas had "pharsa" in their hand, other had lathi in their hand and one Rigna had arrow in his hand. When the informant reached the pucca road then Sukhdeo gave a "pharsa" blow on his head, kalal gave a "pharsa" blow from the back which hit his right hand and Ramdas assaulted him on his neck by "pharasa". He fell down on the ground. On hulla people came there namely, Jalauddin, Nasimuddin and Sundar Singh who took him to the hospital where he was examined by the doctor and subsequently the Investigating Officer recorded his statement in the Hospital. The second witness of the first occurrence is P.W.4, Md. Israil. In his cross examination he has stated that the place of occurrence is a "tanr land" whose name is Bandhwa Patra. He has further stated that on 22.9.1988 at 7 a.m. he was going to Chotkitoto. When he reached 5 km milestone then he saw accused Sukhdeo, Rigan, Prayag, Ramdas, Lalo, Kalal, Chedilal and Suresh. He saw Suresh, Kalal, Lalo and Ramdas had "pharsa" in their hand. Rigna had bow and arrow in his hand and other had lathi in their hand. He saw that Sukhdeo and Ramdas assaulted the informant with "pharsa". Sukhdeo gave 2/3 pharsa blow on the head and Ramdas gave pharsa blow on his arm. The informant fell down. Then witnesses ran and took him to the hospital. He has stated in para 7 that the place of occurrence is near the 5km milestone. P.W.5 is Safayat Hussain who stated in court that on 22.9.1988 at 7 a.m. he along with Israil were going to Chotkitoto and when they reached near 5 km milestone they saw all the accused persons namely Sukhdeo, Ramdas, Kala, Lalo had pharasa in their hand. Rigan had arrow and bow in his hand and other had lathi . Sukhdeo gave a pharsa blow on the head of the informant, Ramdas gave pharsa blow on the hand of the informant. He fell down on the ground. The witnesses came and took him to the Hospital. The last witness of the first occurrence P.W.6 Nasimuddin has stated that on the date of the occurrence at about 7.30 a.m. when he reached near Bandhwapatra then he saw the informant Safi Master going on the road then the accused persons came there namely Sukhdeo, Ramdas, Lalo and one persons had pharsa in their hand. One had bow and arrow in his hand and other had lathi in their hand. Then Sukhdeo and Ramdas assaulted the informant Safi master with pharsa on the head, Ramdas

gave a pharsa blow on the hand. Safi fell down on the ground and become unconscious then all the witnesses reached and took him to the hospital. Thus from the evidence of these four witnesses, I find that the occurrence took place in the early morning between 6.30 to 7.30 p.m. on 22.9.1988 near Bandhwapatra pond seeing the accused persons eight in number. When the informant went towards road he was assaulted by accused Sukhdeo with Pharsa on his head and kalal by pharsa on his hand and accused Ramdas gave pharsa blow on his neck.

9. Learned Counsel for the appellants submitted that three witnesses have given three different place of occurrence, but I find no such discrepancy because P.W.1 stated that at the time of occurrence he was going for easing near Bandhwapatra and when he reached near the house of Shiv Narayan Sao, he saw the accused persons. He came to the pucca road to save himself where he was assaulted by Sukhdeo with a pharsa on his head, kallal on the arm and Ramdas on the neck. In para 4 of cross examination he has stated that the place of occurrence is "tanr land" and not Bandhwapatra pond because when he reached near the Bandhwapatra pond he saw the accused persons and went to the road which is on the tanr land. P.W.4 has also stated that when he reached the 5 km milestone he saw all the accused persons and he saw accused Sukhdeo and Ramdas assaulting the informant with pharsa on his head and hand and cross examination he also stated that he and Safayat had gone to the pond for washing their face and when they returned from the pond they saw the accused persons assaulting Safi. In para 7 he has stated that the occurrence took place near the 5 km milestone which fully corroborate the evidence of P.W.1 that when he was going to the pond and when he reached near the house of Shiv Narayan Sao he saw the accused and then re rushed towards the road where he was assaulted by the three accused persons. P.W.5 Safayat Hussain also stated that when he along with Israil reached near the milestone he saw all the eight accused persons. Accused Sukhdeo, Ramdas ,Lalo and Kalal had pharsa in their hand and Sukhdeo gave pharsa blow on the head of the informant. There after Ramdas gave pharsa blow on the hand. He fell down on the ground. He also stated that on the date of occurrence when he reached near Bandhwapatra then he saw the informant Safi Master going on the road then he saw eight accused persons coming variously armed . Accused Sukhdeo, Ramdas, Kala and Lalo had pharsa in their hand and others had lathi and one persons had arrow. He saw Sukhdeo and Ramdas assaulting the informant with pharsa. Sukhdeo gave a pharsa blow on the head and Ramdas on the hand. He fell down. Thus from the evidences of these four witnesses, I find that there is no discrepancy in the place of occurrence and manner of occurrence. All the witnesses have stated that they saw all the eight accused persons came near the informant armed with lathi, pharsa and bow with arrow. When they reached near the informant then Sukhdeo gave a pharsa blow on the head of the informant and Ramdas gave pharsa blow on the hand. On close examination of evidences of the Doctor, P.W.8, Bijay Prasad Ram, it appears that he examined the informant Md. Safi on

22.9.1988 and found incise wound 3 1/2" x 1/6" x 1/4" cutting his skin, muscles with profuse bleeding on the middle portion of perital region of head. Second incise wound 1"x1/4"x1/4" on the left scapular region. In the opinion of the doctor the injury No. 1 was grievous in nature cause by sharp cutting weapon. It may be pharsa. In the opinion of the doctor the injury No. 1 was enough to cause death in ordinary course of nature. He has proved it which is marked as Ext.2. Thus from the evidences of the Doctor, P.W8 also it is clear that the manner of occurrence as given by the witnesses i.e. pharsa blow on the head and hand of the informant has also been found true. The nature of the injuries were grievous and sufficient to cause death. Thus the conviction of the accused namely Sukhdeo Kumhar and Ramdas Kumhar u/s 307/149 of the Indian Penal Code are well founded and maintained. However, since, there is no evidence corroborating the fact that whether Kalal Kumhar assaulted the informant with pharsa on the neck or not and also no injury has been found on the neck. Hence as far as conviction of the appellant Kalal Kumhar u/s 307/149 of the I.P.C is concerned, the accused Kalal Kumhar is given benefit of doubt and acquitted from the charges u/s 307/149 of the I.P.C.

10. As far as second occurrence is concerned with regard to the assault on P.W.3, Ashiq, brother of the informant and nephew, P.W.2, Bilal, I find that there is no statement in the fardbeyan as to how they were assaulted since the two P.W.s 2 and 3 were assaulted after the first occurrence, when the informant rushed to the hospital. P.W.2 Bilal stated in court that on 22.9.1988 after hearing that the accused persons had committed murder of the informant Safi, then they went to see him in the Hospital. When they reached 5 km milestone then they saw the eight persons standing there variously armed with pharsa, lathi etc. He has stated that when they reached near Kalal gave a pharsa blow on his arm and sukhdéo gave a pharsa blow on the head. Then he fell down on the ground. He was taken to Ranchi where he was operated and remained in hospital for two months. He has stated that police had taken his statement on 16.10.1988 at Bariyatu Hospital. But that statement of P.W.2 given in the Bariyatu Hospital has not been brought on record by the prosecution. Another injured, P.W.3 is Md. Ashiq also stated that on 22.9.1988 when he along with his father Bilal were going to hospital hearing that Md. Safi was done to death. When they reached near 5 km milestone, he saw eight accused persons standing there variously armed with Pharsa, lathi and arrow. When they reached near, then they said to commit their murder also. Bilal was assaulted with pharsa. He wanted to save himself but get a blow on his eyes as a result of which his eyes got damaged. He was then hospitalized for two months at Ranchi. He also stated that given his statement at Bariyatu Hospital on 16.1.1988 which has not been brought on record. To prove their injury, P.W.11 Dr. Madhukar S. Bhatt was examined who was Assistant Professor at RMCH and he proved the injury report of one Dulal aged about 18 years who was examined on 22.9.1988. On the same day he examined one patient namely Md. Yasin aged about 35 years. Thus so far as the second occurrence is concerned, neither the statement of the injured recorded at

Bariyatu RMCH has been brought on record nor the medical evidence has properly been brought on record. The doctor has proved the injury of one Dulal and Md. Yasin which cannot be said that they are Md. Bilal and Asiq. Hence the prosecution has failed to prove the same beyond reasonable doubt.

11. As discussed above for the first occurrence in which the informant was assaulted by the two accused Sukhdeo Kumhar and Ramdas Kumhar are concerned, it has proved beyond reasonable doubt that both the accused persons came there with a view to commit the murder of the informant and as such they are found guilty u/s 307/149 of I.P.C. The sentence of six years awarded to Sukhdeo Kumhar and Ramdas Kumhar are also proper and requires no interference of this Court. So far as the other six accused persons are concerned, since there is no allegation of assault against them and the prosecution has not been able to prove their presence beyond reasonable doubt. Hence they are also given benefit of doubt and all the eight accused persons are acquitted from the charges leveled against them u/s 148 of the I.P.C. and the accused Kalal Kumhar is acquitted from the charges u/s 307/149 of the I.P.C.

12. Since the accused Sukhdeo Kumhar and Ramdas Kumhar are on bail, learned trial court is directed to cancel their bail bond and issue warrant of arrest. The other accused are also on bail. Hence they are discharged from the liability of their bail bond.

13. Accordingly, this appeal is allowed in part.