
(2004) 08 JH CK 0019

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 169 of 1990 (R)

Sukhlal Deogam @ Lal Singh Deogam and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

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

Citation : (2004) 3 BLJR 1730 : (2004) 4 JCR 59

Hon'ble Judges : S.J. Mukhopadhaya, J; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : G.C. Sahu, P.K. Nayak and C.N. Tiwari, for the Appellant; Shekhar Sinha and Ram Prakash Singh, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The appellants were convicted by the learned 2nd Additional Sessions Judge, Singhbhum at Cahibasa in ST No. 262/1987 u/s 302/34, IPC for the murder of Borta Deogam and were sentenced to undergo RI for life. Aggrieved by the same, this appeal has been preferred by the appellants.

2. The incidence said to have occurred in the day time on 17.11.1986. According to the prosecution case, the said Borta Deogam (father of the informant) along with his elder sister-in-law (Bhabhi) Bamela, nephew and other family members had gone to Khalihan. At about 3 p.m., Borta complained uneasy feeling to his brother and returned home. After about half an hour, the informant and her elder aunt (Badi Maa) also returned home but did not find Borta there. On enquiry the informant was told that Borta had gone to market to bring some change for making payment to the grass vendor. At about Sun set, the informant went inside for preparing food. In the meanwhile, her father returned home in severely injured condition, smeared in blood and fell down on the cot kept in the "Angan" (courtyard). Borta told them that the accused Surja Deogam @ Tapu and Lal Singh Deogam assaulted him. Thereafter Borta became unconscious. The informant then requested her sister-in-law (Bhabhi) to inform the male members

who were at work in the Khalihan. In the mean while Borta died. Male members along with other persons arrived thereafter. The deceased was then carried to the police station by a bullock cart where the FIR was lodged in the night. The informant named both the appellants in the FIR as the assailants who killed her father. According to her, there was enmity with the accused persons due to land dispute. On investigation, the police submitted charge-sheet against the appellants u/s 302/34 and also u/s 379 IPC, alleging that while returning from the market bicycle of the deceased was also snatched. The charges were subsequently framed under the said Sections of the IPC to which the appellants pleaded not guilty.

3. In order to prove charges against the accused-appellants, the prosecution examined as many as thirteen witnesses. PW 1 Sunika Deogam was the informant. She is the daughter of the deceased Borta Deogam. In her evidence she has deposed that her father had gone to market and while he was coming back, his bicycle was snatched. Her father told that Lal Singh Deogam and Tapu @ Surja Deogam (appellants) assaulted him and thereafter he became speechless. Furnishing motive, she stated that there was land dispute between the deceased and the appellants Surja @ Tapu and the appellant Lal Singh Deogam is the supporter of appellant Tapu. According to her she named the appellants as father told their names before he became unconscious. PW 2 Sumi Deogam is the wife of the son of the deceased's brother. In her deposition she stated that on his returning home he sat down on a cot for about an hour and then lay down. According to her Borta uttered that the appellants had assaulted him and thereafter Borta became unconscious and after sometime he died. PW 3 Balema Deogam is the elder sister-in-law (Bhabhi) of the deceased. In her deposition she stated that Borta returned from Market in injured condition. He told her that the appellants had assaulted him. According to her, the motive was enmity due to land dispute and litigation. PW 4 Malmum Deogam is the daughter-in-law of deceased Borta. According to her, Borta had gone to market on a bicycle but returned on foot. There were mark of injuries on his neck, cheek and wrist. He had come running. He sat on the cot kept in Angan and thereafter lay down. Subsequently he succumbed to the injuries. According to her he had named the appellants as assailants who assaulted him due to land dispute. PW 5 is a formal witness who has proved inquest report (Ext. 3). PW 6 Baigo Deogam. He is also a witness of the inquest report who proved his signature on inquest report marked as Ext. 1/1. He has submitted that one Ram Deogam informed him about the death of the deceased Borta. When he went there, he saw the dead body of Borta with injuries on cheek, neck, head and wrist. There he was informed by the daughter-in-law of Borta that he had told her that Surja and Lal Singh assaulted him. PW 7 is the nephew of Borta. In his deposition he has stated that at about 3.30 p.m. his uncle Borta complained that he was not feeling well and went home to take rest. Subsequently his sister-in-law (Bhabhi) came to Khalihan weeping and informed that Borta was severely injured and that the appellants had assaulted him. When he came home, he found Borta's body

smearred with blood. Thereafter he informed the village Munda. He also supported that there was land dispute between Surja and Lal Singh. PW 8 Manki Deogam was tendered for cross-examination. He was said to be an independent witness. In his deposition he has said that he is neighbour of Borta and on hearing commotion and screaming he went there and saw the dead body of Borta lying. Bolena, Sonika, Sumi, Malmum were there but they did not name the assailants at that time rather they told that they only saw the dead body of Borta. PW 9 Bali Charan Deogam is the son of the deceased Borta. He got information of his father's murder in the evening of 18.11.1986 at Nimdih Circle where he was posted. When he returned home next day, his family members told him that the appellants were assailants. According to him also there was litigation between Surja Deogam and the deceased. PW 10 Bal Kishun Deogam is the nephew of the deceased Borta. According to him he was at work in Nawadih Mines. After the Sun set he reached home and saw his uncle lying on a cot in the Angan, in injured condition. The family members told him that the appellants had assaulted Borta. PW 11 Baldeo Deogam is the son of the deceased Borta Deogam. He got information about his father's murder at Seraikella on 18.11.1986 at about 10 a.m. and thereafter came to his native place where he saw his father's dead body brought after post-mortem examination. His wife, sister-in-law and aunt narrated the incidence and also named the appellants as assailants. PW 12 M.R. Kadri is the IO of this case. He proved the FIR (Ext. 2) and in his deposition he stated that the fardbeyan of Sunika Deogam was in "Ho" language which was interpreted to him in "Hindi by the village Munda. According to him after recording the FIR he visited the P.O. (Angan of the house of the deceased) where he seized bloodstained earth and sent the same for test to Forensic Science Laboratory, Patna by the order of the CJM Chaibasa. However, the report could not be received and it cannot be ascertained as to whose blood it was. In paragraph 13 of his deposition he has stated that the informant had told him that her father came running and fell down on the cot kept in the Angan. At that time his voice was not clear. He denied that he was told by the witnesses Sumi, Balema and Malmum that when her father came to home, he sat down on the cot. PW 13 is the doctor who conducted the post-mortem examination on the dead body of Borta Deogam. He found several antemortem injuries on the dead body. Injury No. 3 was incised wound on the back of the neck 6" x 1" x 2-1/2" and injury No. 6 was incised wound on the right side in front of the neck 3" x 1/2" x 2-1/2". On dissection, he among others found skin, muscles, vessels of right front of neck with Trachea just below Larynx and Oesophagus cut off. Other incised wounds were also found which do not require detailed discussion in the circumstances of the case.

4. The learned Sessions Judge concluded the trial with his finding that there is no eye-witness of the alleged murder of Borta Deogam, but his dying declaration before the family members PWs 1-4 led him to hold that charge u/s 302/34 IPC has satisfactorily been brought home against both the accused-appellants beyond all reasonable doubt. However, he came to the conclusion that the charge

u/s 379/34 IPC could not be proved against the appellants and thus the impugned judgment of conviction and order of sentence first mentioned were passed against the appellants.

5. Mr. G.C. Sahu, learned counsel appearing on behalf of the appellants, assailed the conviction and sentence against the appellants and submitted that the same are against the materials and evidence on record and are not sustainable in law. According to the learned counsel, the Court below has committed serious errors of law in convicting the appellants mainly on the basis of so called dying declaration of the deceased spelled out by PWs 1-4 which is quite contradictory to the medical evidence. The learned counsel further submitted that there is not a single eye-witness to support the alleged murder and there is no independent witness to corroborate the prosecution story. Learned counsel further submitted that there is no finding as to whether the deceased was in a position to speak anything before his death. The prosecution has completely failed to substantiate that the deceased was in a position to spell the names of the appellants before PWs 1-4. According to him in view of the injuries Nos. 3 and 6, no speech was at all possible. In order to fortify his argument he cited Modi's Medical jurisprudence, 21st Edition, Chapter 15 dealing with regional injuries. Referring to the passage on neck injuries, the learned counsel relied on the following : "In case of a wound of the Larynx, below the vocal cords and in that of Trachea, no speech is possible,...." The learned counsel then referred to the medical evidence stating that the deceased's Trachea and Oesophagus having been found cut no speech at all was possible . According to the learned counsel, the said medical evidence makes the story of dying declaration of the deceased seriously doubtful and conviction of the appellants on the basis of such doubtful version-of PWs 1-4 is not sustainable in law. According to the learned counsel, the said PWs 1-4 are all family members of the deceased and in view of admitted enmity due to land dispute and litigation. There is a chance of false implication of the appellants and it is unsafe to rely on the version of the said interested witnesses for convicting the appellants. Learned counsel in support of his submissions relied on the decisions reported in Darshan Singh alias Bhasuri and Others Vs. State of Punjab, wherein it has been held thus. "When it is said that a conviction can rest on a dying declaration, it is implied that it must inspire confidence so as to make it safe to act upon it. Hence, when from the medical evidence on record it was found that the vital organs of the deceased was completely smashed, he could not be said to be in a fit state of mind and body to make any kind of coherent or credible statement relating to the circumstances which resulted in his death. Therefore, his dying declaration could not be relied upon for any purpose and had to be excluded from consideration." According to him the only independent witness PW 8 Manki Deogam has been tendered by the prosecution and in his cross-examination he has said that PWs 1-4 did not disclose to him regarding the said dying declaration and did not name the appellants rather he was told that everybody saw the deceased after his death. On the said premise he concluded that the impugned judgment of conviction and

order of sentence passed against the appellants are wholly illegal and unsustainable.

5.1. M/S Shekhar Sinha and Ram, Prakash Singh, learned counsel appearing on behalf of the informant, on the other hand, supported the impugned judgment and submitted that there is no vital contradictions in the medical vis-a-vis ocular evidence. According to them, even in such nature of injury a person can speak few words and thus the dying declaration can not be disbelieved. According to the learned counsel, the evidence of PWs 1-4 can not be discarded only on the ground that they were the family members of the deceased and they are interested witnesses. According to the learned counsel, enmity due to land dispute was the possible motive of assault on the deceased by the appellants and taking into consideration the circumstances in totality, the conviction and sentence of the appellants are in accordance with law and warrant no interference by this Court.

6. We have heard the learned counsel for the parties at length and we meticulously scrutinized the evidences on record. We find much substance in the submissions of the learned counsel for the appellants. The learned Sessions Judge has convicted and sentenced the appellants on the basis of the said oral dying declaration of the deceased as spelt by PWs 1-4 holding the appellants guilty of the charges u/s 302/34, IPC. In this case except PWs 1-4 none was the witness of the death of the deceased Borta Deogam. PW 5 is a formal witness who proved inquest report (Ext. 3). Baigo Deogam is a hearsay witness as the story of incidence was narrated to him by PWs 1-4. Further PW 7. PW 9, PW 10, PW 11 are also the family members, but they were not then present and they came to know about the incidence by PWs 1-4. Thus PW 6, PW 7. PW 9. PW 10 and PW 11 are the hearsay witnesses and their testimony has rightly not been relied upon by the learned Sessions Judge. PW 8, who was the only independent witness in this case, did not support the prosecution story. The evidence of PW 12 is not of much importance in this case. PW 13 Dr. Ashok Kumar Sinha conducted the autopsy and proved the post-mortem report of the dead body of Borta Deogam. Me found Trachea and Oesophagus having cut wound. In Medical jurisprudence by Modi, there is description of the neck injuries clearly mentioning that in case of a wound of the Larynx below the vocal cord and in that of Trachea, no speech is possible. In view of the said injuries on the neck, so called dying declaration inspires no confidence and the same can not be safely relied and acted upon as the sole basis for convicting the appellants. In view of the medical evidence, the said dying declaration suffers from grave exception. It is not safe to conclude conviction on the basis of such doubtful dying declaration and that too without any corroboration of other independent evidence. Further in view of the admitted skirmish, there is possibility of concoction and falsehood for implication and roping in of the appellants against whom the family members of the deceased i.e. PWs 1-4 have grouse and it is not safe to rely only on their parrot like version for convicting the appellants. The appellants are thus entitled to get benefits of such doubtful situations.

7. In the circumstances, we do not find it proper to maintain the conviction of the appellants. We, therefore, set aside the judgment of conviction and order of sentence passed by 2nd Additional Sessions Judge, Singhbhum at Chaibasa against the appellants and allow this appeal acquitting the appellants of the charges framed against them. The appellant No. 1 died during the pendency of this appeal and vide order dated 11.12.2003, the wife of the appellant No. 1 was granted leave u/s 394, Cr PC to proceed with this appeal. The accused-appellant No. 2, who is on bail, is discharged from the liability of his bail bonds furnished in the Court below.

S.J. Mukhopadhaya, J.

8. I agree.