

(2007) 04 JH CK 0003
In the Jharkhand High Court
Case No : Criminal Appeal No. 41 of 1995 (R)

Sukra Oraon

APPELLANT

Vs

The State of Bihar (now Jharkhand) and Gonyanda Oraon

RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2007) 04 JH CK 0003

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : R.S. Majumdar and P.A.S. Pati, for the Appellant; T.N. Verma, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. Sole appellant Sukra Oraon stands convicted for the offence punishable u/s 302 of the Indian Penal Code and sentenced to serve rigorous imprisonment for life, by the 2nd Additional Sessions Judge, Gumla Sessions Trial No. 25 of 1995.

2. Brief facts leading to this appeal are that in the morning of 8.8.1990, deceased Madhu Orain was going to the field of Tairas Tigga for the purpose of plantation of paddy. According to informant P.W.2, he along with P.W.1 were working in the Bari when they saw the appellant having rushed after the informant's mother with a tangi in his hand. It is further asserted that the appellant alleging that the deceased was a Dian, assaulted her with Bhujali in his hand causing injuries on her neck. The deceased fell down on the village road and died. The informant along with other villagers chased the appellant who managed the run away. The incident was seen by villagers working in the fields. The reason behind this assault was that the appellant had suspected that the deceased performed witchcraft resulting in illness of his children as well as animals.

3. When the informant was going to inform the police, it arrived at the place of

occurrence and recorded the statement of informant at about 12.00 noon. Thereafter, the police registered Sisai Police Station Case No. 88 of 1990 u/s 302 of the Indian Penal Code against the appellant. The police sent the dead body for post-mortem examination after preparing inquest report. The police finally submitted charge sheet against the appellant u/s 302 of the Indian Penal Code. The trial of the petitioner was committed to the Court of Sessions where charge was framed against him on 17.10.1990 to which he pleaded not guilty and claimed false prosecution. However, the learned trial court after examining the witnesses found and held the appellant guilty u/s 302 of the Indian Penal Code and sentenced him to serve rigorous imprisonment for life.

4. The present appeal has been preferred mainly on the grounds that the learned trial court having relied upon interested and related witnesses committed a mistake of fact and law. Mr. R.S. Majumdar, and Mr. P.A.S. Pati, counsels appearing on behalf of the appellant, vehemently argued that the trial court having relied upon on ocular evidence alone found and held the appellant guilty u/s 302 of the Indian Penal Code whereas the post-mortem report does not support the story of the prosecution case. According to them, the doctor did not find undigested food in the stomach of the deceased. Therefore, a reasonable doubt has been created regarding the time of occurrence, manner of assault and improbability of the witnesses having seen the occurrence. It is also contended that P.W.1 and P.W.2 had no occasion to see the assault because they were working in their Bari when the incident took place. Our attention was drawn towards the improbability that it the incident was seen by P.W.1 and P.W.2 why they did not intervene during the assault. It is also submitted that the appellant has remained in custody for last seventeen years.

5. We have gone through the materials on records to ascertain the points raised by the learned Counsel for the appellant. The incident is said to have been taken place at about 9.00 A.M. when the deceased was going to transplant paddy in the field of Tiras Tigga. The deceased was assaulted on way to the fields at a distance of 200 yards from the Bari of the informant. P.W.1 Birendra Oraon, grandson of the deceased and P.W.2 Goenda Oraon, son of the deceased, have specifically asserted in their evidence that they saw the appellant going after the deceased and assaulting her alleging her to be a Dian with the Bhujali, a sharp cutting weapon, in his hand. P.W.1 a child of about 10 years examined on 8th of July 1991 gave the details of the occurrence by asserting that his grandmother was assaulted with Bhujali by the appellant. During cross-examination this witness has given the details regarding the persons working in the fields and remained consistent supporting P.W.2. P.W.2 has asserted clearly in examination-in-chief that the appellant was running after his mother alleging that she was causing illness in his family. He has given the details of the assault. During cross-examination, he admitted that transplanting of paddy was going on and his mother was going to transplant paddy in the field of Tiras Tigga (P.W.3).

6. P.W.3 Tiras Tigga has only supported the death of the mother of the informant

and preparation of inquest report in his presence by investigating officer vide Ext.1. P.W.4 Cheria Orain has been declared hostile. P.W.5 and P.W.6 were tendered. P.W.8 is a formal witness.

7. P.W.7 is the doctor, who conducted the post-mortem examination on the dead body of Madhu Orain and found two incised wounds over left anterior lateral aspect of neck, cutting great vessels of neck. He also found two lacerated wounds on her left shoulder. He has opined that the injury No. (i) and (ii) may be caused with sharp cutting weapon like Bhujali. Much stress was led that the injuries found on the Madhu Orain could not be caused with a single blow. Eyewitnesses P.W.1 and P.W.2 have not slated that only single blow was given, rather, they have staled that the accused assaulted with Bhujali in his hand causing the death. P.W.9, the investigating officer of this case, arrived at the place of occurrence after entering Station Diary Entry No. 145 dated 9.8.1990 on the police station. He proved the inquest report (Ext.6) not in his handwriting. He described the place of occurrence, a Pagdandi in the fields. He further mentioned vide paragraph-5 that blood was found at that place around the dead body in 11/2 area. It has come in his evidence that the village consisting of only fifteen houses. He further admitted that though it was rainy season, on that day rain has not fallen. The learned Counsel for the appellant criticized the investigating officer for his latches by not seizing the bloodstained soil, giving the distance of the house of the informant etc.

8. However, the eyewitnesses P.W.1 and P.W.2 cannot be disbelieved because of the fact that the incident took place in broad daylight and they were working in the Bari having occasion to see the actual assault. The medical evidence supported the manner in which the deceased was assaulted which confirms the ocular witness. The defence has not brought on record any circumstances to disbelieve the eyewitness as well as the probability of false implication. The learned trial court has considered all these aspects in the impugned judgment vide paragraphs-10 to 12 and 14 at length. We do not find any material on record to disagree with the reasons given and view taken by the learned trial court.

9. Having considered the aforementioned facts and circumstances of the case, we find that the appellant has rightly been found and held guilty for the offence u/s 302 of the Indian Penal Code. Accordingly, we find that the present appeal is without merit and deserves to be dismissed.

10. In the result, this appeal is dismissed and the conviction and sentence passed by the trial court against the appellant are hereby confirmed.

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