

(2017) 03 JH CK 0037

In the Jharkhand High Court

Case No : Cr. Appeal (D.B.) No. 18 of 1992 (R)

Tangna Koka

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, Section 149, Section 201, Section 302, Section 34

Citation : (2017) 2 Crimes 70 : (2017) 2 ECrC 457 : (2017) 2 JBCJ 234 : (2017) 2 JCR 477 : (2017) 2 JLJR 177

Hon'ble Judges : Mr. H.C. Mishra and Dr. S.N. Pathak, JJ.

Bench : Division Bench

Advocate : M/s. Abhay Shankar Dayal, Praveen Shankar Dayal and Supriya Dayal, Advocates, for the Appellants; M/s. Sadhna Kumar, A.P.P, for the State

Final Decision : Allowed

Judgement

H.C. Mishra, J. (C.A.V.) - Heard learned counsel for the appellants, Tangna Koka and Kaju Uraon and the learned counsel for the State. The other two appellants Satna Uraon and Mansa Oraon died during the pendency of this appeal and the appeal as against them, abated by order dated 01.09.2016.

2. The appellants are aggrieved by the Judgement of conviction and Order of sentence dated 18.02.1992, passed by the learned 7th Additional Judicial Commissioner, Ranchi, in S.T. No. 170 of 1990, whereby the appellants have been found guilty and convicted for the offence under Sections 148, 302/149 and 201/34 of the Indian Penal Code, and upon hearing on the point of sentence they have been sentenced to undergo rigorous imprisonment for one year for the offence under section 148 of the Indian Penal Code, rigorous imprisonment for five years for the offence under section 201/34 of the Indian Penal Code, rigorous imprisonment for life and a fine of Rs.1,000/- each, for the offence under section 302/149 of the Indian Penal Code, and all the sentences were directed to run concurrently.

3. The prosecution case was instituted on the basis of the fardbeyan of Munni Tirki, the wife of the deceased, Bishnu Kachhap. She has stated that on 11.11.1989 in the night after taking meal she had slept with her husband and her son aged five years. She woke up as her husband was scolding the son, whereupon she asked her husband not to scold the child. Thereafter, her husband put on his shirt and shoes and asked her to close the door as he was going out. She asked her husband not to go out in the night, but her husband went out saying that someone was calling him. The informant thereafter closed the door and slept. After ? an hour she heard the alarm raised by her husband calling her, whereupon she came out and went towards the akhara from where the sound was coming, and found Satna Oraon (since dead), Tangna Koka, Kaju Oraon and Mansa Oraon (since dead), who were variously armed along with 10 to 12 unknown persons, assaulting her husband. She tried to save her husband, but Satna Oraon who was armed with Farsa threatened to kill her. Thereafter, she went near the house of Bimal Kachhap and her husband also tried to flee away, upon which Satna Oraon assaulted him by Farsa on his head and other named accused persons also assaulted him by Bhala and Lathi, due to which her husband died there. This witness knocked the door of Bimal Kachhap, whereupon the mother of Bimal Kachhap opened the door to whom she informed about the occurrence and due to fear the door was closed taking her inside the house. In the morning they came out and saw the blood shed on the earth. Blood stains were found nearby also, but her husband was not there. She asked a boy, namely, Gandra, to inform her elder brother-in-law. The dead body was not found even upon search. She has stated that there was enmity between Satna Oraon and her husband for distribution of pigs which was supplied from the block. The other accused was involved in gambling which was objected by her husband, due to which also they had threatened her husband, due to which they had assaulted her husband. On the basis of the fardbeyan, Kanke P.S. Case No. 126 of 1989, corresponding to G.R. No. 3697 of 1989 was instituted and investigation was taken up. After investigation the police submitted the charge-sheet against the four accused persons. The fact remains that none of the other persons have been charge-sheeted, except the four accused persons, though it is admitted by P.W.-1, Munni Tirki, the informant, that unknown persons who were also present with the named accused persons, were also of the same village.

4. Upon commitment of the case to the Court of Session, charge was framed against the accused persons for the offence under Sections 148, 302/149 and 201/34 of the Indian Penal Code and upon the accused persons" pleading not guilty and claiming to be tried, they were put to trial.

5. In course of trial the prosecution has examined 13 witnesses in the case, but only P.W.-1 Munni Tirki, the wife of the deceased is the eye witness to the occurrence and she has fully supported the case as stated in the F.I.R. In her examination-in-chief, she has identified her signature and the signature of her brother-in-law on the fardbeyan which were marked Exhibits-1 and 1/1. She has stated that after five days the dead body of her husband was recovered. She has

identified the accused persons in the Court. In her cross-examination she has admitted that there are several houses nearby, but she has stated that she was the only eye witness in the case. She has also stated that her husband was working in Veterinary College as casual worker as Night Guard and in the night of occurrence also, he has gone out in his uniform. She has stated that after the occurrence she had not given any information to her father-in-law and mother-in-law but at the time of the recovery of the dead body her father-in-law and mother-in-law were also present, but their statements were not recorded by the police. She has denied the suggestion to have given the false evidence.

6. P.W.-2 is Gandra Munda, whom the informant had sent to inform her elder brother-in-law at Ranchi. This witness has stated that Munni Tirki came to his house and informed that his uncle Bishnu (i.e. the deceased) had been made to disappear and she requested him to inform this to her elder brother-in-law Bandhu. He met Chand Kashyap in the way and he asked Chand to give this information to Bandhu. In his cross-examination he has admitted that he had not gone to Ranchi to inform Bandhu Oraon. P.W.-3, is Chand Kashyap, who has stated that Gandra met him and asked him to inform Bandhu that Bishnu was traceless. Thereafter, he came to the house of Bandhu and informed him about it.

7. P.W.-5, is Bilaro Devi, who is the wife of Bandhu Oraon and P.W.-6 is Bandhu Oraon, who have stated that Chand and Birsa Kachhap came to their house at Ranchi and informed that Bishnu was traceless. Thereafter, they came to village where they found the wife of the deceased crying and she informed them about the occurrence. P.W.-6, Bandhu Oraon has also stated that on 14.11.1989 at about 1? to 2:00 P.M., on the basis of the confession of Satna, the dead body of Bishnu was recovered which was buried in the sand near Jamuar River. The inquest report was also prepared on which he had also put his signature and one Jatra Ekka had also put his signature. He has identified these signatures which were marked Exhibits-1/2 and 1/3. Both these witnesses are only hearsay witnesses on the point of occurrence. In his cross-examination P.W.-6, has admitted that the police had recorded the confession of Satna and had also obtained his signature on it, upon which this witness and Munni had also put their signatures. This witness has also admitted that the deceased, this witness, his father and brother were also accused in a case of murder.

8. P.W.-7 is Somari Mundarin, who is the lady who had given shelter to the informant in her house at the time of occurrence. This witness has not supported the prosecution case and has turned hostile. P.W.-8 Phagu Oraon is also a person of locality, who has turned hostile and has not supported the prosecution case. P.W.-4 Birsa Oraon, P.W.-9 Moso Oraon and P.W.-10, Tone Oraon have only been tendered by the prosecution.

9. P.W.-11, is Dr. Saroj Kumar, who had conducted the post mortem examination on the dead body of the deceased and proved the ante-mortem lacerated and incised wounds on the dead body of the deceased and has stated that the death was due to the head injuries. The time since death was 3 to 6 days. He has

identified the post mortem report to be in his pen and signature, which was marked Exhibit-2.

10. P.W.-12 is a formal witness who has proved the fardbeyan and the formal F.I.R. as Exhibits-3 and 4. He has also proved the inquest report as Exhibit-5.

11. P.W.-13 is Shiv Chandra Prasad Singh, who is the I.O. of the case. He has also proved the fardbeyan and the F.I.R. which were earlier marked Exhibits-3 and 4. He has stated that he recorded the statements of the witnesses and he had also found the blood stains and blood stained earth. He has stated that he had recorded the confession of Satna Uraon and on his confession he gave an application before the Chief Judicial Magistrate, who deputed the Block Development Officer, Kanke, for recovery of the dead body. On the basis of the confession of the accused the dead body was recovered in presence of the Block Development Officer, Kanke, which was buried. He got the dead body photographed and the inquest report was prepared by the Block Development Officer. This witness has proved the requisition given before the Chief Judicial Magistrate, which was marked Exhibit-6 and he has also proved the inquest report to be in the pen and signature of the Block Development Officer, which was earlier marked Exhibit-5. This witness has also stated about the investigations made by him. In his cross-examination, he has admitted to have recorded the confessional statement of Satna Uraon.

12. Learned counsel for the appellants has submitted that the appellants have been falsely implicated in this case due to admitted enmity. It is submitted that the case has been supported only by the wife of the deceased, but she has specifically admitted in her cross-examination that there were several houses nearby the place of occurrence and she also stated that she is the only eye witness to the occurrence. Learned counsel submitted that her evidence cannot be relied upon, in view of the fact that the statement of the person of the locality was also recorded by the police, but he, P.W.-8 Phagu Oraon, has not supported the prosecution case and has turned hostile. Even P.W.-7 Somari Mundarin, in whose house informant had allegedly taken shelter at the time of occurrence has not supported the prosecution case at all. It is submitted that though it is stated by the witnesses, including the I.O., that the dead body was recovered on the basis of the confessional statement of the accused Satna Uraon (since dead), but the fact remains that even the confessional statement has not been proved in the case. Though the I.O. has stated that the recovery of the dead body was made in presence of the Block Development Officer, but even the Block Development Officer has not been examined in the case. Learned counsel accordingly, submitted that the evidence of the sole eye witness is not at all trust worthy and cannot be relied upon and the appellants are entitled at least to the benefit of doubt.

13. Learned counsel for the State on the other hand has opposed the prayer submitting that P.W.-1, Munni Tirki is the only eye witness to the occurrence and she has fully supported the case. Her evidence cannot be discarded only due to

the fact that she is the interested witness and her evidence is fully corroborated by the medical evidence of P.W.-11 Dr. Saroj Kumar, who had found several lacerated and incised wounds on the dead body of the deceased. Learned counsel accordingly, submitted that the prosecution has been able to prove the charge against the appellants beyond all reasonable doubts.

14. Having heard learned counsels for both the sides and upon going through the record, we find that the appellants have also been convicted for the offence under Section 148 of the Indian Penal Code and for the offence under Section 302 of the Indian Penal Code, with the help of Section 149 of the Indian Penal Code. The fact remains that the charge-sheet was submitted only against four accused persons and no other accused was put to trial, even though, according to the informant P.W.-1 Munni Tirki, they were also of the same village. Accordingly, no case can be said to be made out either under Section 148 of the Indian Penal Code, nor the accused could be held guilty for the offence with the help of Section 149 of the Indian Penal Code, as both these offences can be committed only by an unlawful assembly consisting of five or more than five persons.

15. This apart, we find that the enmity between the parties is admitted and though P.W.-1 Munni Tirki has supported the prosecution case, but in view of the admitted enmity between the parties, it is not safe to place reliance on her sole evidence, as she has admitted in her cross-examination that there were several houses nearby. The I.O. has also supported this fact and had also recorded the statement of P.W.-8 Phagu Oraon, who gave his statement before the police as an eye witness to the occurrence, but this witness has turned hostile and has not supported the prosecution case at all. To cap all, even P.W.-7 Somari Mundarin, in whose house the informant had allegedly taken shelter at the time of occurrence has also not supported the prosecution case at all and has turned hostile. Though it is admitted by the I.O., that he had recorded the confessional statement of the co-accused Satna Uraon and the dead body of the deceased was recovered in the presence of the Block Development Officer, but neither the Block Development Officer has been examined in the case, nor the confessional statement of the said co-accused has been proved. Though the I.O. had stated that he had found the blood stains at the place of occurrence, but no seizure list of the blood stained earth has been proved.

16. In view of the aforementioned findings, we are of the considered view that it is not safe to rely only on the deposition of P.W.-1 Munni Tirki, in view of the admitted enmity between the parties, since her evidence has not been supported by any of the persons of the locality, including P.W.-7 Somari Mundarin. In our considered view, in the facts of this case, the appellants were entitled at least to the benefit of doubt.

17. Accordingly, the impugned Judgement of conviction and Order of sentence dated 18.02.1992 passed by the learned 7th Additional Judicial Commissioner, Ranchi, in S.T. No. 170 of 1990, are hereby, set aside. Both the appellants, viz.,

Tangna Koka and Kaju Uraon are given the benefit of doubt and they are acquitted of the charges. The appellants are on bail and they are discharged from the liabilities of their respective bail bonds.

18. This appeal is accordingly, allowed. Let the Lower Court Records be sent back forthwith along with the copy of this Judgement.

Dr. S.N. Pathak, J.—I agree.