
(2019) 01 JH CK 0140

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 71, 92 Of 1996 (R)

Turia Pahan And Ors

APPELLANT

Vs

State Of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 15-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 148, 149, 302, 436
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 01 JH CK 0140

Hon'ble Judges : H.C. Mishra, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : P.K. Bhowmik, K.K. Mishra, S. Bhowmik, Vandana Bharti

Final Decision : Allowed

Judgement

H.C. Mishra, J

1. Both these appeals arise out of the same impugned Judgment, and as such, they were heard together, and are being disposed of by this common Judgment.
2. Heard learned senior counsel for the appellants and learned counsel for the State.
3. The appellants are aggrieved by the impugned Judgment of conviction dated 10th of April, 1996, and Order of sentence dated 15.04.1996, passed by the learned Additional Judicial Commissioner, Khunti, in S.T. No.760 of 1992, whereby all the appellants have been found guilty and convicted for the offences under Sections 148, 302 / 149 and 436 / 149 of the Indian Penal Code, and the appellant Birsa Lugun, along with other two co-appellants since dead, have also been found guilty and convicted for the offence under Section 302 of the Indian Penal Code. Upon hearing on the point of sentence, the appellant Birsa Lugun has been sentenced to undergo R.I. for life and fine of Rs. 1000/- for the offence under Section 302 of the Indian Penal Code. All the appellants have been sentenced to undergo R.I. for life with fine of Rs. 500/- each, for the offence

under Sections 302 / 149 of the Indian Penal Code, R.I. for one year each, for the offence under Section 148 of the Indian Penal Code, and R.I. for 7 years each, for the offence under Sections 436 / 149 of the Indian Penal Code, and all the sentences were directed to run concurrently.

4. Prosecution case was instituted on the basis of the fardbeyan of the informant Jitani Mundain, who is the sister-in-law of the deceased Budhu Munda, recorded at her village Patratoli, P.S. Torpa, in the then District of Ranchi, on 23.3.1992 at 10.45 hours, wherein she had stated that she was living in her house along with the deceased Budhu Munda, who was her brother-in-law (sister's husband). Her sister had died about 7 months ago, and they were planning to have the burial ceremony of her mortal remains under the stone slab (commonly known in the tribal community, and herein after referred to as 'pathal-gari'), on 23.3.1992, but the villagers were opposing to it, stating that she was married at a different village and, accordingly, that ceremony could not be held in their village. On the previous day at about 6.00 P.M., the appellants Birsa Lugun, Lachha Munda (since dead), Turia Pahan, Dulal Pahan (since dead), Delga Munda (since dead), Teten Pahan, Ghasia Pahan, Nath Pahan, Manga Pahan, and other about 4-5 persons came variously armed, they dragged out Budhu Munda from the house, and Birsa Lugun assaulted him by balua (a sharp cutting weapon), on his neck, and Lachha Munda and Delga Munda (both since dead) assaulted him by tangi on his head, and other accused appellants had assaulted the deceased by lathi. All the aforesaid accused committed the murder of the deceased Budhu Munda at the spot and thereafter, they put her house to fire. The informant fled away due to fear, and when she returned back after sometime, she saw the deceased dead and the house was also burning. She went to village Mamarla and informed one Birsa Munda about the occurrence. As to the cause of occurrence, she has stated that the deceased was living in his in-laws' place, due to the fact that her parents had no male issue, and he was looking after the landed property, for which, the villagers were against them, and they also did not like that the pathal-gari of her sister be done in the village. Claiming that the aforesaid accused persons had committed the murder of her brother-in-law and also burnt her house, the fardbeyan was given by the informant, on the basis of which, Torpa P.S. Case No. 17 of 1992, corresponding to G.R. No. 199 of 1992, was instituted for the offences under Sections 147, 148, 149, 436 and 302 of the Indian Penal Code, against all the aforesaid accused persons, and investigation was taken up. After investigation, the police submitted the charge-sheet against the accused persons.

5. After commitment of the case to the Court of Session, charge was framed against the accused Birsa Lugun, Lachha Munda and Delga Munda, for the offence under Section 302 of the Indian Penal Code, and against all the named accused persons for the offences under Sections 148, 302 / 149 and 436 / 149 of the Indian Penal Code, and upon the accuseds' pleading not guilty and claiming to be tried, they were put to trial. It may be stated that all the named accused persons were convicted and sentenced by the Trial Court below, and were appellants in these appeals, but during the pendency of these appeals, the

appellants Dulal Pahan, Lachha Munda and Delga Munda died, and their names were deleted from the array of appellants in their respective appeals.

6. In course of trial, 7 witnesses were examined by the prosecution, including the I.O., and the Doctor, who had conducted the post-mortem examination on the dead body of the deceased. Out of the material witnesses examined, P.W.-3 Mani Pahan had only been tendered by the prosecution.

7. P.W.-4 Jitani Mundain is the informant of the case. She has stated that the deceased was her brother-in-law, who was living as ghar-jamai, as her mother had no male issue. He was living there for about 20 years and this witness was also living in the same house. The deceased was looking after the land of the family, which was not liked by the villagers and the villagers were against them. The sister of this witness, i.e., the wife of deceased Budhu Munda, died about 2½ years ago, and they were planning to hold the pathal-gari ceremony of her sister, but the villagers were not ready for that and they were asking them to leave the village. The pathal-gari ceremony was to be held on Monday, but in the Sunday evening, all the accused persons named by this witness, including the appellants, assembled at their house. She has stated that Budhu Munda was dragged out from the house by Delga, and Birsa assaulted him by balua on his neck, Lachha and Delga assaulted him by tangi and the other accused persons had assaulted him by lathi, due to which, he fell down. Thereafter, the accused persons put the house to fire with the help of straw. She has stated that Manga and Teten were having straws in their hands and Turia was having the match box, and they put the house to fire, and thereafter they went away to their respective houses. This witness went to some distance, and when the accused persons were searching her also for killing her, she went to the house of Birsa at village Mamarla, and informed him about the occurrence. She stayed there for the whole night and in the morning, she went to village Champabaha, where she informed Mansukh about the occurrence, and thereafter, she returned back to Patratoli at about 9 to 10 A.M. in the morning. Police had arrived there, her fardbeyan was recorded and she had put her thumb impression on the fardbeyan. She had identified the accused persons in the Court. In her cross-examination, her attention was drawn towards her statements made before the police, wherein she has stated that she had given the statement before the police that Teten and Manga were having straws in their hands and Turia was having the match box and they put the house to fire, and she had also informed the police that Delga dragged out the deceased from the house. She has stated that she did not inform any villager about the occurrence, as all of them were against them and they were supporting the accused persons. She has stated that the pathal-gari of a lady is held, where she is married, but her mother had transferred the land to both these sisters, due to which, they were living at their parents' village. She has also stated that the relatives are also invited for the pathal-gari ceremony, but before the relatives could come, the occurrence had taken place. She has stated that on the date of occurrence, her mother had gone to her relative's place and she was not present. She had not gone to inform her mother about the

occurrence. She has also admitted that there was land dispute with the accused persons and there was a case also for the same, about 10 to 15 years ago. She has denied the suggestion of falsely implicating the accused persons.

8. P.W.-1 Birsa Munda is a hearsay witnesses. He is a resident of village-Mamarla and has stated that on the date of occurrence, at about 8 to 9 P.M., Jitani, who is sister-in-law of the deceased, came to his house and informed that Budhu was assaulted by the accused persons and they had also burnt the house, and as they were also planning to kill her, she fled away. She had also informed about the accused persons, who had committed the murder and burnt the house. He has also stated that the deceased was living at her in-laws' place as ghar-jamai, as he had no brother-in-law and he was lookin after the landed property of the family. He has identified the accused persons, stating that they were named by the informant before him. In his cross-examination, this witness has admitted that he did not go to the place of occurrence, and he has deposed only as informed by Jitani.

9. P.W.-5 Lukas Horo is a resident of village Japut, and he is also a hearsay witness, who has stated that he had visited the place of occurrence for attending the pathal-gari ceremony of Jiuni. When he reached there, he saw the house burning, and he also saw the dead body of the deceased Budhu. He was informed by Jitani about the occurrence that these accused persons had assaulted the deceased to death and put the house to fire. In his cross-examination, he has stated that he had seen the dead body and also the burning house and he had deposed only as informed by Jitani. He could not identify the accused persons, being the resident of a different village. He was invited for the pathal-gari ceremony by the mother of the informant.

10. P.W.-2 Sanika Pahan is the witness to the fardbeyan, which he has stated to be recorded in his presence by A.S.I., N.P. Singh, upon which the informant had put her thumb impression and he had put his signature, which he has proved, and the fardbeyan was marked Exhibit-1. He has stated that the police had also prepared the inquest report of the dead body of the deceased, and had also seized the blood stained soil and the weapons of offence from the place of occurrence, on which, two witnesses had put their signatures. He has proved the seizure list also, which was marked Exhibit-2. In his cross-examination, he has stated that he had not put his signature on the seizure list.

11. P.W.-6 is Dr. Vijoy Kumar Prasad, who had conducted the post-mortem examination on the dead body of the deceased on 28.3.1992, and had found the following ante-mortem injuries on the dead body of the deceased:-

1. Sharp cut injury 5" x 2" x 2" on middle of right parietal bone cutting the soft tissues, bone and brain matter.
2. Sharp cut injury 5" x 1" x 1" on occipital bone cutting the soft tissues, bone and brain matter.

3. Abrasion 3" below umbilicus.

He has stated that the injury Nos. 1 and 2 were caused by sharp cutting weapon, such as balua and the injury No. 3 was caused by hard and blunt substance. Cause of death were injury Nos. 1 and 2, which were on the vital parts of the body and were sufficient to cause death in ordinary course of nature. He has identified the post-mortem report to be in his pen and signature, which was marked Exhibit-3.

12. P.W.-7 Nageshwar Prasad Singh is the I.O. of the case. He has stated that in the year 1992 he was posted at Torpa Police Station. On 23.3.1992, upon getting information about the occurrence, he reached the place of occurrence, where he recorded the fardbeyan of Jitani Mundain. He has identified the fardbeyan, which was earlier marked Exhibit-1. He has also proved the formal FIR, which was marked Exhibit-4. He inspected the place of occurrence and he has given the details thereof, where he found the dead body of the deceased, and he also found the house burning. He seized the blood stained soil, some weapons of offence and the burnt remains of the house, from the place of occurrence, and prepared the seizure list, which he has identified, and was earlier marked Exhibit-2. He has stated that the inquest report was also prepared. He recorded the statements of the witnesses and, thereafter, due to his transfer, he handed over the charge of investigation to other I.O., who submitted the charge sheet. His attention was drawn towards the statements made by the informant before him, and he has stated that she had not given the statement before him that Manga and Teten were having the straws and Turia was having match box and they put the house to fire. She had also not specifically stated that Delga had dragged the deceased out of the house. He has denied the suggestion of making faulty investigation.

13. After closing the prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein they have denied the evidence against them. No evidence was adduced by the defence. On the basis of the evidence on record, the accused appellants were convicted and sentenced by the Trial Court below as aforesaid.

14. Learned senior counsel for the appellants has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court below, cannot be sustained in the eyes of law, inasmuch as, the prosecution case is supported by the only eyewitness P.W.-4 Jitani Mundain, and she has admitted the enmity with the accused persons, stating that there was land dispute between the parties, for which, where was also a case between them about 10-15 years ago. None of the villagers have been examined in the case and she has only stated that all the villagers were against them. Learned senior counsel submitted that since she is highly interested witness, her evidence could not be made the basis for the conviction of the accused persons. The other witnesses were only the hearsay witnesses. It is further submitted by the learned senior counsel for the appellants that even the evidence of P.W.-4 Jitani Mundain is not

very trustworthy, inasmuch as, this witness has specifically stated that the deceased was assaulted by balua by the appellant Birsa Lugun on his neck and other two accused persons assaulted him by tangi on head, and the other accused persons had assaulted him by lathi. This evidence is not at all supported by the medical evidence of P.W.-6 Dr. Vijoy Kumar Prasad, and the post-mortem report, proved by him as Exhibit-3, as no injury was found on the neck of the deceased. Two sharp cut injuries were found on the head only, and only one injury caused by hard and blunt substance was found on the dead body of the deceased in the form of abrasion. Learned counsel, accordingly, submitted that the evidence of sole eyewitness is not at all corroborated by the medical evidence on record, and is not trustworthy at all. She had also made improvements over her earlier version given before the police, and her attention was also drawn towards her statements given before the police and the necessary contradictions have been taken from the I.O., P.W.-7 Nageshwar Prasad Singh. Learned senior counsel for the appellants has submitted that in the facts of this case, the appellants were entitled at least to the benefits of doubt, even though the prosecution case is supported by the sole eyewitness.

15. Learned counsel for the State, on the other hand, has opposed the prayer, submitting that the case is fully supported by the sole eyewitness P.W.-4 Jitani Mundain, who has given the vivid details of the occurrence, and her evidence is fully corroborated by the medical evidence of P.W.-6 Dr. Vijoy Kumar Prasad, and the post-mortem report proved by him as Exhibit-3. She has stated that all the villagers were against her family for the reasons given by her in her evidence and, as such, she is the only natural eyewitness to the occurrence. Learned counsel, accordingly, submitted that the prosecution has been able to bring home the charges against the appellants beyond all reasonable doubts, and there is no illegality in the impugned Judgment of conviction and Order of sentence, passed by the learned Trial Court below, worth any interference by this Court.

16. Having heard counsels for both the sides and upon going through the evidence on record, we find that the prosecution case rests only on the evidence of the sole eyewitness P.W.-4 Jitani Mundain, who is the sister-in-law of the deceased, and all the other witnesses are only the hearsay witnesses. Though, the sole eyewitness has stated that the entire village was against them due to the fact that the deceased was living in his in-laws' place as ghar-jamai for the last 20 years and looking after the landed property, which was not liked by the villagers and they were also objecting to the pathal-gari ceremony of her sister, but the fact remains that there are vital contradictions in the evidence of the informant and the medical evidence on record. Though, there is specific allegation against the appellant Birsa Lugun to have assaulted the deceased by balua on his neck, which fact she had stated in her fardbeyan, as also in her evidence in the Court, but the evidence of P.W.-6 Dr. Vijoy Kumar Prasad, who had conducted the post-mortem examination on the dead body, clearly shows that there was no such injury on the neck of the deceased. Both the sharp cut injuries on the head of the deceased were attributed to the other two co-

appellants (since dead), who are alleged to have assaulted the deceased by tangi on his head, and all the other appellants are alleged to have assaulted the deceased by lathi, but only one injury in the form of abrasion was found on the dead body of the deceased, caused by hard and blunt substance. Her evidence in the Court shows that the accused Manga and Teten were having the straws in their hands and Turia was having the match box and they put the house to fire, and she has also stated that the Delga had dragged the deceased from his house, but these are the clear improvements over her statements given before the police, as proved by P.W.-7 Nageshwar Prasad Singh, the I.O. of the case. These are the vital contradictions in the evidence of P.W.-4 Jitani Mundain, and it is an admitted fact that there was enmity with the accused persons from before, for which, there was a case about 10 to 15 years ago also. Indeed no independent witness has come to support the prosecution case, even though such a big occurrence had taken place in the village, in which, the entire house had been burnt and one person was killed. In view of the contradictions in the evidence of the informant, who is the sole eyewitness, there are bona fide doubts about the manner of occurrence as deposed by her, the benefits whereof must go to the appellants. On the basis of the evidence on record, we find that the prosecution has failed to bring home the charges against the accused persons beyond all reasonable doubts, and the impugned Judgment of conviction and Order of sentence, passed by the learned Trial Court below cannot be sustained in the eyes of law.

17. For the foregoing reasons, the impugned Judgment of conviction dated 10th of April, 1996 and Order of sentence dated 15.04.1996, passed by the learned Additional Judicial Commissioner, Khunti, in S.T. No.760 of 1992, convicting and sentencing all the appellants for the offences under Sections 148, 302 / 149 and 436 / 149 of the Indian Penal Code, and the appellant Birsa Lugun, also for the offence under Section 302 of the Indian Penal Code, are hereby, set aside. Consequently, all the appellants in both these appeals, are given the benefits 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. Both these appeals are accordingly allowed. Let the Lower Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.