
(2019) 08 JH CK 0031

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 516 Of 2001

Vidhyadhar Pater And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 149, 300, 302, 326

Citation : (2019) 08 JH CK 0031

Hon'ble Judges : Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Swapan Maji, Asit Baran Mahata, Ravi Prakash

Final Decision : Partly Allowed

Judgement

Chandrashekhar, J

1. Five persons were put on trial on the charge framed under section 302/34 I.P.C for causing murder of Kamla Kant Manjhi, the brother of the informant.
2. In Sessions Trial No.105 of 1992/ T.R.No.300 of 1993, the learned Sessions Judge has convicted the appellants under section 302/34 I.P.C and sentenced them to undergo R.I. for life for the said offence.
3. An affidavit dated 18.07.2019 has been filed. It is stated that appellant no.2, namely, Sishupal Patar has passed away. No application for substitution has been filed by the legal heirs/successors of the appellant no.2.
4. Accordingly, this criminal appeal qua the appellant no.2, namely, Sishupal Patar stands abated.
5. The informant of the case is Kiran Manjhi whose fardbeyan was recorded on 18.10.1991 at the police station. In his fardbeyan, the informant has stated that on the fateful day at about 5:30 p.m. when he alongwith Lakhi Ram Singh Munda and Narendra Manjhi reached near the house of Ravi Singh Munda, he saw that his brother Kamla Kant Manjhi was returning from village Naurhi. The informant

started conversation with his brother and in the mean-time the accused persons, namely, Sishupal Patar, Pancham Patar, Ghashi Ram Patar, Vidhyadhar Pater and Haripada Pramanik alias Gholtu Pramanik armed with Farsa came there and at the exhortation of the accused-Sishupal Patar all the accused persons started assaulting his brother with Farsa. The informant and others present there tried to save Kamla Kant Manjhi, however, the accused persons threatened them also. They raised alarms, however, no one from the vicinity came there. They took Kamla Kant Manjhi and proceeded for the hospital, however, on the way he succumbed to the injuries. According to the informant the cause for the occurrence was rivalry between the party members of CPM and Congress and the accused persons were forcing him and his brother to join CPM.

6. During the trial, the prosecution has examined 7 witnesses; the informant is P.W.2.

7. The prosecution has projected the informant-P.W.2, Lakhi Ram Singh Munda-P.W.4 and Narendra Nath Manjhi-P.W.5 as eye-witnesses.

8. Dr. Ramsewak Sahu, who has conducted autopsy, has found the following injuries on Kamla Kant Manjhi:

- i) 4 x 1 cm x soft tissue and 2 x 1 cm x soft tissue on the right side of forehead
- ii) 1 ½ x 1 cm x scalp deep on the right side of occipital region of head
- iii) 1 x ½ cm x soft tissue on right mastoid region.

9. According to the doctor, the injuries found on the person of Kamla Kant Manjhi were caused by hard and blunt substance and the death was caused due to head injury. All the injuries were ante-mortem in nature.

10. In the court, the informant has deposed that on 18.10.1991 it was Durga emersion day. He has seen the accused persons assaulting his brother Kamla Kant Manjhi who had joined him near the house of Ravi Singh Munda. He has specifically named the appellants as the persons who have assaulted his brother with Farsa. The prosecution witness, namely, Lakhi Ram Singh Munda-P.W.4 is another eye-witness. He has also stated that when they were going to see the Durga emersion procession with Kiran Manjhi and Narendra Manjhi, Kamla Kant Manjhi joined them near the house of Ravi Singh Munda. In the meantime, the accused persons armed with Farsa came there and started assaulting Kamla Kant Manjhi indiscriminately. He has named all the appellants as the assailants. Narendra Nath Manjhi-P.W.5 has also narrated a similar story of the incident. In their cross-examination these witnesses have stood to their ground and nothing material could be elicited from them by the defence.

11. Mr. Swapan Maji, the learned counsel for the appellant has contended that delay in lodging the First Information Report, delay in forwarding the First Information Report to the court, non-production of the crime weapon and non-examination of the Investigating Officer have seriously shaken the foundation of

the prosecution's case.

12. A glance at the testimony of the informant would reveal that when Kamla Kant Manjhi, the injured, was being taken to hospital on the way he died and, therefore, his dead-body was taken to the police station. The informant in his cross-examination has stated that he remained at the police station the whole night and the next morning police came to the place of occurrence. We find that the fardbeyan of the informant is recorded at the police station. We also find that the distance between the place of occurrence and the police station is about 12 Kilometers. The facts brought on record of the sessions trial do not reflect any intentional delay in the registration and forwarding of the F.I.R. In view of the consistent evidence of P.W.2, P.W.4 and P.W.5, we find that the prosecution has firmly proved its case against the appellants. During the trial, the accused persons were afforded full opportunity, they have cross-examined the witnesses at length and, therefore, we find that no prejudice has been caused to them during the trial. On non-examination of the Investigating Officer during the trial, nothing substantial has been shown to the court how prejudice has been caused to the accused persons. It is not a universal rule that in every case in which the Investigating Officer is not examined prejudice would be caused to the accused; it is for the accused to demonstrate how prejudice has been caused to him.

13. Another plea raised on behalf of the appellants is that the medical evidence, insofar as injuries found on Kamla Kant Manjhi are concerned, does not corroborate the ocular evidence. Mr. Maji, the learned counsel for the appellants submits that Farsa is a sharp-cutting weapon, however, no incised wound has been found on Kamla Kant Manjhi and, therefore, the manner of occurrence as disclosed by the prosecution is not established.

14. Answer to the above contention is found in the testimony of the doctor. During his cross-examination by the defence, it appears that a specific question was put to the doctor whether the injuries found on Kamla Kant Manjhi can be caused by the blunt portion of Farsa and to this question the doctor has stated that he cannot say with certainty but it might be caused with the blunt portion of Farsa. Moreover, none of the prosecution witnesses has stated that the appellants have assaulted Kamla Kant Manjhi from the sharpend portion of Farsa. The learned Sessions Judge has also dealt with this issue in paragraph no.11 of the judgment under appeal. We find that the view taken by the learned Sessions Judge is based on evidence and a probable one. The contradiction in the medical evidence and ocular evidence would become relevant only when it is demonstrated that the injury found on the injured/deceased in all probability cannot be caused in the manner as described by the prosecution witnesses. We find no such contradiction in this case.

15. From the evidences led by the prosecution in Sessions Trial No.105 of 1992, we find that the prosecution has established presence of the appellants at the place of occurrence and at the time of occurrence. The prosecution has also proved participation of the appellants in the occurrence.

16. However, we are of the opinion that the circumstance in which Kamla Kant Manjhi has been killed conviction of the appellants under section 302/34 I.P.C is not proper.

17. It was an autumn evening, in mid-October, when the occurrence has taken place. The prosecution has set up a case against the appellants that they all started assaulting Kamla Kant Manjhi indiscriminately. The appellants are five in number; one, namely, Sishupal Patar has died during pendency of this criminal appeal. They all were holding Farsa. The doctor has rendered an opinion that Kamla Kant Manjhi has died due to head injury, but then, the prosecution has failed to establish who has inflicted injury on the head of Kamla Kant Manjhi which has proved fatal. There were as many as 3 lacerated wounds found on Kamla Kant Manjhi, but, the allegation by the prosecution is that all the appellants have assaulted him.

18. In the aforesaid crime scene as portrayed by the prosecution witnesses, at the sunset, it is difficult to hold that any one of the appellants has intended a particular injury on Kamla Kant Manjhi. In our opinion, the ingredients under section 300 I.P.C are not established by the prosecution. By now it is well-established that when the number of injuries and the number of accused persons are several and it is not possible to identify which amongst them has inflicted which injury, conviction of all the accused persons with the aid of section 34 I.P.C or section 149 I.P.C for murder is not safe and proper.

19. We find that grievous injuries have been found on the person of Kamla Kant Manjhi and the manner in which he was assaulted establishes common intention of all to cause grievous injury to Kamla Kant Manjhi and, accordingly, the appellants, namely, Vidhyadhar Pater, Ghashi Ram Patar, Pancham Patar and Haripada Pramanik alias Gholtu Pramanik are convicted under section 326/34 I.P.C and sentenced to undergo R.I. for 10 years.

20. The bail-bonds furnished by them are cancelled. They are directed to surrender before the court-below to serve the remaining sentence.

21. In the result, Criminal Appeal (D.B.) No. 516 of 2001 is partly allowed.

22. Let the lower-court records be transmitted to the court concerned forthwith.

23. Let a copy of the judgement be communicated to the trial court by FAX.