

(2020) 01 JH CK 0012

Jharkhand High Court

Case No: Criminal Appeal (D.B.) No. 168 Of 2011

Thakuwa Munda And
Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Jan. 8, 2020

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 147, 148, 149, 302, 320, 323, 324, 326, 341
- Prevention Of Witch (DAAIN) Practices Act, 2001 - Section 4, 5
- Evidence Act, 1872 - Section 134

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

Bench: Division Bench

Advocate: Prakash Chandra Roy, Shekhar Sinha

Final Decision: Partly Allowed

Judgement

Shree Chandrashekhar, J

1. The accused-appellants, who are agnates of husband of the informant, were sent up for trial on the charge under sections 147, 148, 323/149 and

324/149 of the Indian Penal Code. The appellants have also been charged under section 341 and under section 302/149 of the Indian Penal Code.

2. In S.T. Case No.07/2007, the appellants and Aghnu Munda have been convicted and sentenced to RI for life under section 302/34 of the Indian

Penal Code.

3. The accused persons, namely, Rajendra Munda and Rajesh Munda have been acquitted of the charges framed against them.

4. The charge under section 4/5 of the Prevention of Witch (Daain) Practices Act has failed.

5. The informant of this case is daughter-in-law of Biglahi Devi, the deceased. On the basis of her fardbeyan, which was recorded on 04.07.2006 at

about 18:00 hrs. at village Sadma Kathaltoli, Ormanjhi P.S. Case No. 70 of 2006 has been lodged against Thakuwa Munda, Rajesh Munda, Rajendra

Munda, Sawna Munda, Aghnu Munda and Barti Devi. In her fardbeyan the informant has stated that in the afternoon of 04.07.2006, at about 3:00

p.m., the accused persons forming an unlawful assembly, variously armed with iron rod, tangi, lathi and dabia, entered her house and started abusing

her mother-in-law who was sitting in the courtyard. They were calling her daain and accusing her of practicing witchcraft on their son, daughter and

daughter-in-law. They have assaulted her mother-in-law indiscriminately due to which she fell on the ground and died. On her raising hulla, several

villagers had assembled there and the accused persons fled away.

6. During the trial, the prosecution has examined eight witnesses; the informant is PW-6. The prosecution has projected her as an eyewitness.

7. In the court, the informant has given a similar narration of the incident as has been recorded in her fardbeyan. She has named all the appellants as

the persons who have assaulted her mother-in-law. She has stated that at the time when her mother-in-law was assaulted by the appellants no other

family member was at home; her father-in-law was ploughing a nearby field.

8. The prosecution witness Jitu Munda PW-1 has been declared hostile and Laxman Munda PW-2 has deposed in the court that no seizure was

affected in his presence. Rajendra Munda PW-3 and Mahendra Munda-PW-4 are sons of Biglahi Devi and Mukun Munda PW- 5 is her husband.

They are not the eyewitnesses. PW-3 and PW-4 both have returned home at about 4:00 p.m. and PW-5 has come to the place of occurrence after he

was informed about the incident by the informant. They have seen the dead body of Biglahi Devi with several injuries on her person.

9. By now, it is well settled that conviction of an accused can be recorded on the basis of testimony of a solitary witness, if his evidence inspires

confidence. The requirement in law is that evidence of the sole witness should be of such sterling quality that it leaves no manner of doubt on

complicity of the accused in the crime. Section 134 of the Indian Evidence Act provides that no particular number of witnesses is required for proof of

any fact. In *Lallu Manjhi v. State of Jharkhand*, reported in (2003) 2 SCC 401, the Supreme Court has observed as under:

“10. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the

testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii)

neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single

witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars

by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness.”

10. During her cross-examination, the informant has stood to her grounds. She has remained unshaken and no such material could be elicited from her

which could have thrown doubt on her testimony. Minor inconsistencies in her testimony would not render her evidence unreliable. In *A. Shankar*

Vs. State of Karnataka (2011) 6 SCC 279, the Hon'ble Supreme Court has held as under:

“22. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely,

errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to

a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in

the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial

matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

11. Through the informant, the prosecution has established presence of the appellants at the place of occurrence and their participation in the occurrence.

12. However, the issue for determination is whether they can be convicted with the aid of section 34 of the Indian Penal Code.

13. In the present case no charge was framed under section 34 of the Indian Penal Code rather the accused persons were charged with the aid of

section 149 of the Indian Penal Code. However, in view of the law on the subject, we are of the opinion that no prejudice has been caused to the

appellants [refer, *Dhanna v. State of M.P.* reported in (1996) 10 SCC 79]. Section 34 of the Indian Penal Code embodies constructive liability of

all. It makes others liable for the act of an accused, however, the test is whether the final act has been accomplished in furtherance of common

intention of all.

14. The evidence of the informant is lacking in details on common intention. During her cross-examination, she has admitted that she does not know

what is unlawful assembly. In her examination-in-chief, she has made a specific allegation of assault by Thakuwa Munda on the head of Biglahi Devi

but in respect of Sawna Munda she is not specific. She has simply stated that Sawna Munda has assaulted Biglahi Devi with rod.

15. Dr. Tulsi Mahto PW-8 who has conducted the postmortem examination on 05.04.2006 at 10:30 hrs. has found the following injuries on Biglahi

Devi:

“External Injuries:-

(A) Bruises: (I) Rail Track in nature 16 cm x 2 cm and 7 cm x 2 cm over left thigh lateral side, (II) 17 cm x 2 cm over the back of right side of chest,

(III) 15 cm x 2 cm over the posterior aspect of left side of chest (B) Lacerated wound: 7 cm x 3 cm x soft tissue of right side of forehead.

Internal injuries:-

(I) fracture of radius and ulna bones lower part, (II) there was fracture of 7th to 9th ribs posterior with laceration of lungs and presence of blood and

blood clot in the left chest cavity, (III) there was fracture of 3rd to 6th ribs anterior.

16. In the opinion of the doctor, the injuries were anti-mortem in nature and caused by hard and blunt substance. The lacerated wound of the size of

7 cm x 3 cm found on right side of forehead of Biglahi Devi is attributable to assault by Thakuwa Munda and there is no other injury on her

head. The doctor has found seven ribs "3rd to 9th" of Biglahi Devi fractured but the prosecution is completely silent who has caused this injury to

her. In this context, it needs to be indicated that there is no allegation against Thakuwa Munda of assaulting Biglahi Devi around her chest and

abdominal area.

17. From the prosecution's evidence all that we gather is that the appellants intended to assault Biglahi Devi, but death of Biglahi Devi has not

been caused in furtherance of common intention of all.

18. On such evidence, the prosecution has failed to establish that the appellants have acted in furtherance of common intention and, accordingly, their

conviction and sentence under section 302/34 of the Indian Penal Code are set aside.

19. Thakuwa Munda has caused injury on forehead of Biglahi Devi by hoe. From a single blow intention to cause death may be inferred if it is found

on vital part of the body, but then, the doctor has not rendered an opinion that lacerated injury found on forehead of Biglahi Devi has caused her death.

The injury no.(B) which is a lacerated wound on the forehead is just

"skin-deep" and there is no corresponding fracture of the skull. In such state

of evidence, we hold that Thakuwa Munda has caused injury to Biglahi Devi which attracts the offence under section 324 of the Indian Penal Code.

20. Accordingly, Thakuwa Munda is convicted and sentenced to RI for two years under section 324 of the Indian Penal Code.

21. On complicity of Sawna Munda, we find that the prosecution has established that he has played a role in the incident. The informant has stated

that he has assaulted Biglahi Devi with road and the doctor has found several injuries around her chest and thigh. There are corresponding internal

injuries found by the doctor " seven ribs were found fractured " but the prosecution has failed to establish that all the injuries were caused by

Sawna Munda. In the opinion of the doctor, death has been caused due to shock and haemorrhage as a result of injuries caused to Biglahi Devi and,

not to forget, there is one more accused who has been found involved in the occurrence.

22. Section 320 of the Indian Penal Code defines grievous injury. Clause- Seventhly to section 320 provides that fracture or dislocation of a bone or

tooth would amount to grievous hurt. In the light of the above evidence, it is established that he intended to cause such grievous injury which was likely

to cause death.

23. In view of the above discussions, we hold that the appellant, namely, Sawna Munda has committed the offence under section 326 of the Indian

Penal Code and, accordingly, he is convicted and sentenced to RI for ten years under section 326 of the Indian Penal Code.

24. Mr. Shekhar Sinha, the learned Public Prosecutor states that Thakuwa Munda has remained in custody for more than five years.

25. He is on bail and, therefore, he is discharged of liability of the bail-bonds furnished by him.

26. The learned Public Prosecutor states that the appellant, namely, Sawna Munda has remained in custody for more than thirteen years.

27. Therefore, the appellant, namely, Sawna Munda shall be set free forthwith, if not required in connection to any other case.

28. Criminal Appeal (D.B.) No.168 of 2011 is partly allowed, in the aforesaid terms.

29. Let lower court records be transmitted to the court concerned, forthwith.

30. Let a copy of the judgment be communicated to the trial court through FAX.