

(2025) 01 JH CK 0070

Jharkhand High Court

Case No: Criminal Appeal (DB) No.30 Of 1999 (R)

Dampa Bari

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Jan. 14, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 313
- Indian Penal Code, 1860 - Section 302, 304II

Hon'ble Judges: Rongon Mukhopadhyay, J; Arun Kumar Rai, J

Bench: Division Bench

Advocate: Md. Rajaullah Ansari, Nehala Sharmin

Final Decision: Disposed Of

Judgement

Rongon Mukhopadhyay, J.Â Â Â Â

1. Heard Mr. Md. Rajaullah Ansari, learned counsel for the appellant and Mrs. Nehala Sharmin, learned Spl.P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 04.02.1997 passed by Mr. Philip Topno, learned Sessions

Judge, Singhbhum West at Chaibasa in S.T. No. 130 of 1995 whereby and whereunder the appellant has been convicted for the offence under section

302 IPC and has been sentenced to undergo rigorous imprisonment for life.

3. The Fardbeyan of Sune Kui was recorded on 30.11.1994 in which it has been stated that on 29.11.1994 at 7.30 P.M. the husband of the informant

had come back from Mangal Hat and a trickle of blood was seen oozing out from his head. On being asked the husband of the informant had

disclosed that at the Hariya shop of Loke he was having Hariya by parking his bicycle and in the meantime, somebody had taken away his bicycle

which resulted in a quarrel between the husband of the informant and Dampa Bari (appellant) which aggravated to an assault between both of them.

The villagers intervened and separated both the sides after which the husband of the informant started for his house along with Birsa Banra, Longa

Banra and Lollo Bari. It was further disclosed by the husband of the informant that after a short distance from the Hariya godown near the bushes

Dampa Bari had assaulted on the back of his head with a stick. Lollo Bari had snatched the stick from the hand of Dampa Bari. It has been alleged

that after having dinner the husband of the informant went to sleep and, in the morning, he was not able to speak at which he was being taken to

Chaibasa Hospital and on the way near Amina Chowk he succumbed to his injury.

4. Fracture of left parietal bone Fracture of occipital bone Fracture of base of skull aggravated to an assault between both of them. The villagers

intervened and separated both the sides after which the husband of the informant started for his house along with Birsa Banra, Longa Banra and Lollo

Bari. It was further disclosed by the husband of the informant that after a short distance from the Hariya godown near the bushes Dampa Bari had

assaulted on the back of his head with a stick. Lollo Bari had snatched the stick from the hand of Dampa Bari. It has been alleged that after having

dinner the husband of the informant went to sleep and, in the morning, he was not able to speak at which he was being taken to Chaibasa Hospital and

on the way near Amina Chowk he succumbed to his injury.

4. Based on the aforesaid allegations, Muffasil P.S. Case No. 120/1994 was instituted against Dampa Bari. On completion of investigation, charge

sheet was submitted and after cognizance was taken, the case was committed to the court of Sessions where it was registered as ST No. 130 of

1995. Charge was framed under Section 302 IPC against the accused which was read over and explained to him in Hindi, to which he pleaded not

guilty and claimed to be tried.

5. The prosecution has examined as many as 9 witnesses in support of its case.

6. P.W.1 Dr. Bishambhar Deyal was posted as a Civil Assistant Surgeon at Sadar Hospital, Chaibasa and on 01.12.1994 he had conducted autopsy on

the dead body of Bika Banra and had found the following:-

External: Lacerated wound over left parietal region 2½x 1½ bone deep.

Lacerated wound over occipital region 2½x 1½ bone deep.

On dissection: Head- Fracture of left parietal bone

Fracture of occipital bone

Fracture of base of skull

Neck- Nothing abnormal detected (N.A.D.)

Stomach-Empty. Urinary bladder- Full

All viscera- Intact.

The cause of death was opined to be on account of the above-mentioned injuries. The weapon used was hard and blunt such as Danda. He has proved the post-mortem report which has been marked as P.W.1.

In cross-examination, he has deposed that except two injuries, no other injury was found on the person of the deceased.

7. P.W.2 Sune Kui is the informant and the wife of the deceased who has stated that it was a Tuesday when her husband had disclosed that he had

been assaulted by Dampa Bari on account of a quarrel with respect to the theft of his bicycle. There was an injury on the head of her husband. On

the next day, she had taken her husband to the hospital, but on the way he died. She had thereafter gone to the Police station with the dead body of

her husband where her Fardbeyan was recorded. She has stated that she does not know Dampa Bari.

In cross-examination, she has deposed that her husband had returned from the market after sunset. Her husband did not have any signs of injury on

his body except on the head. No treatment was administered to him for the injury he had sustained. Before going to sleep, her husband had only stated

about Dampa Bari being the assailant. She had not accompanied her husband to the hospital, but he was being taken to the hospital by other persons.

8. P.W.3 Birsa Banra has stated that he was returning home from the market and as he crossed the Hariya shop of Chando, he saw a quarrel

between Bika Banra and Dampa Bari in which he intervened and separated them. He has stated that thereafter he, Bika, Passing and Dibai were

going home when Dampa with a Lathi chased Bika and gave a Lathi blow on his head. Lollo had snatched the Lathi from Dampa Bari who thereafter

fled away. He and the others had taken Bika to his house. Bika died while he was being taken to the hospital. The police had seized the Lathi from the

house of Dampa Bari and prepared a seizure list in which he had put his signature which has been proved and marked as Exhibit 1.

In cross examination he has deposed that Passing and Dibai were also returning to their home with him. He had not seen the quarrel. There were 20-

30 persons present but he cannot disclose about their names. On the next morning he had gone to the house of Bika who was not speaking anything.

He had not accompanied Bika to the hospital. The police had recorded his statement on the day Bika died.

9. P.W.4 Churi Banra has stated that he had gone to the house of Bika on the date of occurrence and he had found an injury on the head of Bika.

Bika on being asked by him about the wound had disclosed that he was consuming Hariya in a shop at Bari Jola when someone had stolen his bicycle.

This incident led to a quarrel between Bika and Dampa Bari but the situation was pacified. Bika had further disclosed to him that on the way to his

house Dampa Bari had assaulted him with a Danda. In the next morning Bika was being taken to the hospital but on the way he died.

In cross-examination he has deposed that the wife of Bika had informed him about the incident. When Bika had disclosed about the incident to him

there was no one present. There were three persons who had gone to the Police Station with the dead body of Bika and they were Sune Kui, Turam

Banra and the father of Bika.

10. P.W.5 Limbai Banra has stated that while he was returning from the market, Dampa had committed assault upon Bika. He and the others had

brought Bika home. Bika had injuries on his hand, back and legs. Bika had died on the way to the hospital.

In cross-examination, he has deposed that he had not stated before the Police that he and three other persons had carried Bika home. He had not seen

the initial assault but the subsequent assault had been witnessed by him.

11. P.W.6 Jit Pahan Kui was posted as an Assistant Sub-Inspector of Police in Chaibasa P.S and on 30th November 1994 Sune Kui had come to the

Police Station with the body of her husband and her Fardbeyan was thereafter recorded. The fardbeyan of Sune Kui has been proved and marked as

Exhibit 3. On being given the charge of investigation he had recorded the restatement of the informant. He had prepared the inquest report which has

been proved and marked as Exhibit 4. He had inspected the place of occurrence which is near the Hariya Godown of Lalo Bari where a quarrel had

ensued between the deceased and Dampa Bari. He had recorded the statement of the witnesses, obtained the post-mortem report and on completion

of investigation had submitted charge sheet.

In cross-examination he has deposed that the witness Churi Banra had stated before him that he had come to know about the occurrence from the

deceased Bika Banra. The witness Birsa Banra had stated that Bika Banra had died on the way to the hospital.

On re-examination by the prosecution on recall he has stated that Lalo Banra had disclosed before him the incident of assault with a Danda committed

by Dampa Bari upon the deceased and he had snatched the Danda from Dampa Bari. The witness Loke Bari had stated before him about the assault

committed by Dampa Bari upon the deceased. The witness Ghanshyam Bari had stated about the quarrel between Dampa Bari and the deceased and

they were separated after which both went towards their respective homes.

In cross-examination he has deposed that in course of investigation he had not seized any Danda.

12. P.W.7 Lollo Bari, P.W.8 Loke Bari and P.W.9 Ghanshyam Bari did not support the case of the prosecution and hence were declared hostile by

the prosecution.

13. The statement of the accused was recorded under Section 313 Cr.P.C in which he has denied his complicity in the murder of Bika Banra.

14. It has been submitted by Mr. Razaullah Ansari, the learned counsel for the appellant that the eyewitness accounts of P.W.3 and P.W.5 are full of

contradictions and their evidence cannot be relied upon for the purposes of conviction of the appellant. He has submitted that the deceased was not in

a position to speak and as such the dying declaration relied upon by the prosecution would not have any cascading effect on the case of the defence.

An alternative argument has been advanced by him to the effect that even if the prosecution establishes its case, the offence would at best come

within the purview of Section 304 Part II I.P.C as the appellant did not have any intention to commit the murder of Bika Banra.

15. Mrs. Nehala Sharmin, learned Special P.P has pointedly referred to the evidence of P.W.2, P.W.3 and P.W.5 while submitting that it is proved

beyond doubt about the active role played by the appellant in committing the murder of Bika Banra.

16. We have heard the learned counsel for the respective sides and have also perused the trial court records.

17. An innocuous incident of theft of the bicycle of Bika Banra while he was consuming Hariya, led to a quarrel between him and the appellant and

the matter was pacified at the instance of P.W.3 who separated both the warring parties. While Bika Banra was returning home along with P.W.3

and others, the appellant had, all of a sudden, committed an assault with a Danda on the head of Bika Banra and before the things could worsen, the

Danda was snatched from the hand of the appellant who thereafter had fled away. Bika Banra while returning home had disclosed about the incident

and the name of the assailant to P.W.2 and P.W.4 and on his condition having deteriorated he was being taken to the hospital in the next morning but

on the way he died. P.W.2 and P.W.4 are the witnesses before whom Bika Banra had given an oral dying declaration. There is nothing on record to

indicate that Bika Banra was not in a position to speak when he was brought home in an injured condition. The informant (P.W.2) in her Fardbeyan

has also narrated the incident as disclosed to her by Bika Banra. There is complete harmony in the evidence of P.W.2 with her Fardbeyan and the

defence has failed to elicit any contradiction in her evidence. The evidence of P.W.2 and P.W.4 seems to gather strength from the eyewitness

account of P.W.3 in whose presence the assault had taken place. P.W.5 is also an eyewitness to the occurrence and his presence at the time of the

incident has also been noted by P.W.3. The prosecution has therefore been able to establish that it was the appellant who had committed assault upon

Bika Banra which led to his death.

18. The manner of assault, however, seems to indicate that the assault was not pre-planned but had occurred at the spur of the moment. There is also

a close proximity between the initial quarrel and the ultimate assault with a Danda. The dispute leading to the final assault was itself trivial related to

the theft of the bicycle of the deceased and none of the witnesses have stated that the theft was committed by the appellant. The witnesses have

stated that only one blow was given by the appellant with a Danda on the head of the deceased, though the post-mortem report reveals two injuries on

head over parietal region and occipital region. There were no other injuries found on the person of the deceased as per P.W.1. The learned trial court

has discarded the contention of the appellant regarding the offence coming within the purview of Section 304 Part II I.P.C primarily on the basis of

the findings recorded in the post-mortem report without taking into consideration the ocular evidence which would clearly point to an offence

committed under Section 304 Part II, I.P.C.

19. We, therefore, on the basis of the discussions made herein above modify the conviction of the appellant from under Section 302 to under Section

304 Part II, I.P.C. Since the appellant has remained in custody for more than six years and the incident had occurred about three decades back, we

also modify the sentence imposed upon the appellant to the period already undergone.

20. This appeal is disposed of with the modification in conviction and the sentence as noted above.