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(2006) 12 JH CK 0003

Jharkhand High Court

Case No: None

Gunadhar Oraon and Another	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision: Dec. 7, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 323, 324, 34

Citation: (2007) 3 JCR 136

Hon'ble Judges: Dhananjay Prasad Singh, J; Amareshswar Sahay, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This appeal is directed against the judgment of conviction and order of sentence dated 18.1.2001 passed by the 1st Additional Sessions Judge, Seraikella in Sessions Trial No. 60/96, whereby and whereunder the learned Sessions Judge held the appellants guilty under Sections 302/34, IPC and sentenced them to serve RI for life and further found them guilty under Sections 323/34, IPC and sentenced them to serve RI for six months. However, sentences were directed to run concurrently.

2. Factual matrix leading to this appeal are as follows:

In the morning of 17.5.1995 the appellants alongwith Sukhram and Kalipado were ploughing the land situated in the east of the house of the informant, PW 8 Chhotu Oraon. As the land in question belonged to the informant, he alongwith deceased went at the PO, the disputed land and forbade them. This led to assault by the appellants with two others upon the informant and deceased. According to him, appellant Khoka gave a blow with axe upon the head of the deceased and others assaulted him with lathi. The villagers arrived and saved him and his brother and further sent them for treatment at Chandil

hospital. As Subodh has received severe injuries, he was shifted to TMH Jamshedpur for better treatment where he breathed his last on 21st May, 95. The occasion for this occurrence is said to be land dispute. The police was informed and statement of the informant was recorded at 8.45 a.m. on 23.5.1995. Chandil police, which investigated the case, finally submitted charge- sheet under Sections 323/324/302/34. IPC. The appellants alongwith two others were charged accordingly. However, during trial Sukhram and Kalipado died. The learned trial Court after examining witnesses found and held both the appellants guilty under Sections 302/323/34, IPC and sentenced them as aforesaid.

3. The present appeal has been preferred on the ground that the learned trial Court has not considered the materials on record properly. It is also asserted that in absence of any independent witness the prosecution version should have been discarded. According to the appellants, the non-examination of the 10 has further prejudiced the defence case. The learned Counsel for the appellants further stressed that both the informant and his brother said to have been injured in the scuffle, remains unsupported by any medical evidence. Learned Counsel further pointed out that occurrence taking place on 17.5.1995 was not reported to the police. Further the informant and other witnesses alongwith deceased have admitted in their evidence that they were referred to Chandil hospital by the police but the first version has not been brought on record. It is also asserted that the defence version by examining DW proved rent receipt of the disputed land, has been ignored. It was also pointed that even after the death of Subodh on 21.5.1995 the FIR was lodged after two days on 23.5.1995. Therefore, this inordinate delay in lodging the FIR creates a reasonable doubt.

4. We have anxiously considered the points stressed by the learned Counsel for the appellants. The prosecution version is that in the morning of 17.5.1995 for ploughing of the land claimed by the informant, this incident took place. The prosecution has examined nine witnesses in support of the allegations. PW 1 Balram Oraon, PW 3 Satish Oraon and PW 6 Amar Singh have been declared hostile, as they did not support the prosecution version. PW 2 Bishwanath Oraon and PW 4 Hariram Oraon have been tendered by the prosecution. PW 5 Bhujang Oraon, who claimed to be eye-witness of the occurrence, arrived at the PO on the alarm raised by the informant. According to him, when he objected, he was also assaulted by appellant Khoka with the axe in his hand. This witness has stated that after incident they went to Chandil PS, from where they were referred to Chandil hospital for treatment. During cross-examination he admitted that the disputed land was Sarna worship place and was not recorded in their name. He further admitted, vide para 3, that on the alarm raised by the informant, he reached there where assault took place. He exaggerated himself by giving the details of injuries on himself and PW 8, as they are not supported by any medical evidence.

5. PW 8, the informant, has supported his fardbeyan before the police. It is further asserted that he along with the deceased was assaulted by appellant Khoka Oraon with the axe in his hand. He further asserted that appellant Gunadhar has assaulted the deceased with lathi. He admitted in cross-examination that the appellants were of same

family, with whom he got the dispute regarding the land for five months before the occurrence. He tried to support PW 5 regarding assault made upon him. According to him, the deceased was assaulted by both the appellants with axe and tabla.

6. PW 7 Dr. L. Choudhary has conducted the post-mortem on the dead body to find stitched wound 2.5 cm. over right parietal region or skull and one small abrasion on left side forehead. He further found fracture of skull bones alongwith blood clots, subdural haemorrhage present over left frontal region of brain. This witness has opined that the cause of death was haemorrhage and shock due to head injury.

7. PW 9 Prithviraj Sahu has formally proved the fardbeyan recorded by SI, Sri S.N. Singh as Ext. 2. The IO has not been examined in this case.

8. On perusal of evidence available on record, it is apparent that the FIR was lodged after six days on 23.5.1995 on the statement of the informant, who admittedly has approached the police in the afternoon on 17.5.1995. It also appears from the records that PWs 5 and 8 were examined and treated at Chandil PS on the same day and thereafter deceased was referred to TMH for better treatment, however, the fardbeyan is silent on this aspect. Neither Chandil police has brought on record any evidence that actually the informant alongwith injured approached the Chandil police immediately after the occurrence. It has further come on record that the probable witnesses of the occurrence have not supported the prosecution. PWs 1, 3 and 6 the charge-sheet witnesses, have denied the knowledge about the occurrence. PWs 2 and 4 have been tendered by the prosecution. The prosecution case therefore, hinges on the credibility of PWs 5 and 8, both brothers. These two witnesses have admitted in cross-examination that they gave the first version of the occurrence to Chandil police immediately after the occurrence and that version is not available on record. The IO in this case has not been examined by the prosecution. It has also come on record that incident took place on the protest made by the informant side, when the appellants were ploughing the land in question. DW 1 has brought on record some rent receipts in support of his claim. Informant and PW 5 have admitted that they did not have any document in their favour regarding the said land.

9. Having considered the above mentioned facts and circumstances, where the prosecution has not been able to explain the delay of six days in lodging the FIR and the earliest version is missing on record, we find that the prosecution has not been able to bring home the charges against the appellants. Accordingly, we find and hold that the present appeal has got merit in it and deserves to be allowed.

10. In the result, this appeal is allowed, conviction of the appellants is set aside and appellants are acquitted of the charges levelled against them. As the appellant No. 1, Gunadhar Oraon is on bail, he is discharged from the liability of his bail bonds. The appellant No. 2, Khoka Oraon being in jail, is directed to be released form the jail forthwith, if not wanted in any other case.