

(2006) 05 JH CK 0021

Jharkhand High Court

Case No: Criminal Appeal No. 114 of 1999

Madhusudan @ Masudan Gope
and Others

APPELLANT

Vs

The State of Bihar (Now
Jharkhand)

RESPONDENT

Date of Decision: May 10, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 304, 304(1), 34

Citation: (2006) CriLJ 4190 : (2006) 3 JLR 598 : (2006) 3 EastCriC 399 : (2006) 2 AIRJharR 31

Hon'ble Judges: N. Dhinakar, C.J; Rakesh Ranjan Prasad, J

Bench: Division Bench

Advocate: A.K. Sahani, for the Appellant; Shekhar Sinha, for the Respondent

Judgement

1. The appellants 1 to 6 were arrayed as A1, A3, A2, A4, A5 & A6, in the orbefore the Sessions Judge, Gumla and in this judgment the appellants will be referred as A1 to A6 in the order they were arrayed before the trial court, for the sake of convenience. They were charged u/s 302/34 I.P.C. on the allegation that at 2.30 P.M. on 30.3.1997 in furtherance of common intention of each other. A3, Dinesh Gope caused injury on Etwa Oraon, the deceased in this case, with Bhujali and the other accused beat him listed him, leading to his death. The trial judge finding the appellants guilty, as charged, sentenced each one of them to imprisonment for life. The present appeal is against the said conviction and sentence.

2. P.W. 1, Somo Oraien, is the wife of the deceased, Etwa Oraon, P W. 3, Chainu Oraon and P.W. 4, Jagdeo Oraon are the sons of the deceased. P.W. 2, Tetri Oraien is the wife of P.W.3, Chainu Oraon and hence the daughter-in-law of P.W.1 and the deceased. They were residing in the village- Murgu Kyotoli. The villagers were suspecting that the deceased was practicing witchcraft. They questioned him but

the deceased denied the said allegation. At 2.30 P.M. on the fateful day, namely on 30.3.1997 the deceased was asked to appear before a Panchaiti. The deceased Etwa Oraon, accused Nos. 1 to 6 and other villagers were present at the Panchaiti. When questioned by the villagers, the deceased denied that he is practicing witchcraft. An altercation took place between the parties and at that time Dinesh Gope (A3) assaulted the deceased with Bhujali on the head and other parts. A1, A3, A5 & A6 beat and fisted him. The occurrence was witnessed by P.W.1 to P.W.4. A fardbeyan (Ext.4) was given at 9.00 P.M. on the same day by P.W.1 to P.W.10. A crime was registered and investigation was taken up and later after the death of Etwa Oraon the crime was altered to one u/s 302 I.P.C. P.W. 10, conducted inquest over the dead body and requested the medical officer to conduct autopsy.

3. On receipt of the requisition P.W. 8, Dr. Ajit Kumar Choudhary, attached to R.M.C.H., Ranchi, conducted autopsy and found the following injuries.

Abrasion :

- 1) 8 x 1/2 c.m. over front of chest lower part;
- 2) 10 x 1/2 c.m. over right flank of chest,
- 3) 2x2 c.m. over top of right shoulder,
- 4) 3x1 c.m. over left scapular region.
- 5) 4 x 1/2 c.m. on the forehead.

Incised (Stitched) wound:

- 1) 5 x. 1/2 c.m. x soft tissue over lower part of neck left side,
- 2) 4x1/2 c.m. x soft tissue over left chin,
- 3) 8 x 1/2 c.m. x soft tissue over left cheek,
- 4) 4 x 1/2 c.m. x soft tissue over right occipital region,
- 5) 3 x 1/2 c.m. x bone deep over left side of forehead with chipping of the frontal bone,
- 6) 5 x 1/2 c.m. x bone deep over right occipital region of head.

Stitched wound :

30 c.m. over left fronto parieto temporo occipital region of head. There is a bony gap of 20 c.m. x 6 c.m. over left fronto parieto temporo occipital bone. There was contusion of whole scalp with left temporal muscle.

- 1) There is a crack fracture extending from the posterior end of the cut fracture running backward joining to the bony gap.
- 2) There is presence of subdual blood + blood clot on both smears of brain.

He issued (Ext. 3) the postmortem certificate with his opinion that, death is on account of head injuries suffered by the deceased and that the said injuries are sufficient in the ordinary course of nature to cause his death

4. After the completion of the investigation, the final report was filed and all the accused, denied their complicity, when questioned u/s 313 Cr.P.C., but no witness was examined on their side.

5. The learned Counsel appearing for the appellants submits that even if the entire facts are taken to be true the act committed by Dinesh Gope, A3, will not attract the penal provision of Section 302 I.P.C. since, even according to the prosecution, the occurrence took place during an altercation at the Panchaiti, to which place the deceased was summoned for being questioned by the villagers. It is his further submission that A1, A2, A3, A4, A5 & A6 ought not to have been convicted u/s 302 read with Section 34 I.P.C., as there is nothing to suggest that the above accused shared the common intention of A3, Dinesh Gope and hence they are entitled for acquittal. On the above contention we have heard Mr. Shekhar Sinha, learned Counsel appearing for the State.

6. The Doctor who conducted autopsy and the certificate (Ext. 3) issued by him conclusively prove that deceased Etwa Oraon died on account of homicidal violence. The prosecution before the trial court examined 4 witnesses as P.W.1 to P.W.4 to prove that the third accused Dinesh Gope inflicted injuries on the deceased with Bhujali and that A1, A2, A5 and A6 beat and fisted him. We have perused the evidence of P.W. 1 to P.W. 4 and their evidence shows that the villagers suspected the deceased to be practicing witchcraft and when questioned, the deceased refuted the allegation. According to the witness, a Panchaiti was convened on 30.3.1997 and the deceased was summoned to the Panchiti at 2.30 P.M.. According to the witnesses at the Panchaiti when the deceased was questioned about his conduct of practicing witchcraft, he denied, leading to an altercation between the parties. The evidence further shows that during the altercation Dinesh Gope beat the deceased with Bhujali and the other accused slapped and listed him. On going through the evidence, we find no reason to reject the evidence of eyewitnesses. We, therefore, accept and hold that the deceased was inflicted with final injuries by A2., Dinesh Gope.

7. The question, that is to be decided by us, is the nature of the offence committed by A3, and whether A1, A2, A4, A5 and A6 sought the common intention of A3. The facts, extracted above, clearly show that the deceased was summoned to the Panchiti and at the Panchiti, an altercation took place between the parties during which the deceased was inflicted with injuries by A3 with a Bhujali. It, therefore, shows that there was no premeditation on the part of A3 to cause the death of deceased, Etwa Oraon and that he was inflicted with the injuries during an altercation. In the above circumstances we are of the view that the conviction of the Dinesh Gope u/s 302 read with Section 34 I.P.C. cannot be maintained and hence we

set aside his conviction under the said Section. He is now found guilty u/s 304 Part-I I.P.C. since the facts show that the deceased was attacked by Dinesh Gope during an altercation at the Panchaiti. On being found guilty u/s 304(1) I.P.C. we sentence him to undergo 7 years rigorous imprisonment. As regard A1, A2, A4, A5 and A6 we find that even according to the prosecution they have only slapped and fisted the deceased but fatal injuries were not inflicted by any of them and the occurrence had taken place in a Panchaiti and during an altercation, the third accused Dinesh Gope inflicted the injury on the deceased without any premeditation. We, therefore, find it difficult to sustain the conviction of A1, Madhusudan @ Masudan Gope, A2, Sita Gope, A4, Sochan Oraon, A5, Biriya Oraon & A6, Munna Oraon u/s 302 I.P.C. read with 34 I.P.C. We accordingly set aside their conviction and sentence. In the result the third accused, Dinesh Gope is found guilty u/s 304 Part-I I.P.C. for which he is sentenced to 7 years rigorous imprisonment and others are acquitted of the charges.

8. It is reported that A3, Dinesh Gope is in jail; if so and if he has served the sentence of 7 years the same will be given set off.