(2009) 11 JH CK 0037

Jharkhand High Court

Case No: None

Kuldip Minz and Benzamin Minz	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision: Nov. 12, 2009

Acts Referred:

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

Hon'ble Judges: Rakesh Ranjan Prasad, J; Dhirubhai Naranbhai Patel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

D.N. Patel, J.

The present appeal is arising out of judgment and order of conviction and sentence passed by the Additional Sessions Judge, Gumla vide order dated 19th/20th of July, 2000, respectively in Sessions Trial No. 221 of 1989, whereby the appellants have been convicted for the offence punishable u/s 302 to be read with Section 34 of the Indian Penal Code for life imprisonment Against this judgment and order of conviction and sentence the present appeal has been preferred by the appellants.

2. If the case of the prosecution, if unfolded, the facts are as under:

It is the case of die prosecution that the deceased, namely, Tirsus Ekka, and his son Barned Ekka (P.W.6) had gone to the field on 30th of March, 1989, in the morning hours for work in their field. Accused persons came there with weapons in their hands, namely, tangi (sharp cutting instrument) and a lathi (hard and blunt substance) and chased the deceased and his son (P.W.6) and assaulted the deceased. Appellant No. 1 was having tangi in his hand whereas appellant No. 2 was having lathi in his hand. Several injuries were caused to Tirsus Ekku, who expired on the spot. In the nearby field several persons were there. One of them was examined as P.W.7. P.W.6, who is a son of the deceased, was also in the field, who having been chased by these appellant came running to his house and informed his mother who

is Smt. Rejina Tirkey (P.W.4) and P.W.3 was also informed by P.W.4 about the whole incident and immediately the FIR was filed on the very same day on 30th of March, 1989, at about it 11:00 am. They all rushed to the field where the dead-body of the deceased was tying. Statements of the eye witnesses were recorded, charge-sheet was filed against this appellants-accused and the Sessions Trial No. 221 of 1989, was registered against them and upon appreciating the evidences on record, both the appellants have been convicted for the offence punishable u/s 302 to be read with Section 34 of the I.P.C. and sentenced to undergo life imprisonment.

3. We have heard learned Counsel appearing on behalf of the appellants, who has mainly submitted that when there are lot of omissions and contradictions and improvements in the depositions of the prosecution witnesses, the alleged eye witnesses are not reliable and are untrustworthy. This aspect of the matter has not been property appreciated by the trial court. Hence, the judgment and order of conviction and sentence passed by the trial court, deserves to be quashed and set aside. It is also submitted that alleged eyewitnesses P.W.6 and P.W.7 are the interested eye-witnesses. P.W.6 is a minor witness and at the relevant time he was aged about 12 years. It is also submitted that there was a lot of disputes between the accused side persons and the deceased and several civil litigations were pending and, therefore, they have been wrongly roped in the offence. It is further submitted by the learned Counsel for the appellants that the name of appellant No. 2 i.e. Kuldip Minz, who is referred as original accused No. 1, was never named In the FIR and subsequently his name has been added and there is no Test Identification Parade. This aspect of the matter has not been appreciated by the trial court and, therefore, the impugned judgment and order of conviction and sentence deserves to be quashed and set aside.

4. We have heard learned Counsel appearing on behalf of the informant, who has submitted that the case of the prosecution is based upon two eye-witnesses namely P.W.6 and P.W.7, who have narrated the whole incident, in detail and without omissions and contradictions. There is enough corroboration to the depositions of these eye-witnesses by the depositions of P.W.3 and P.W.4 as well as by the depositions of P.W.1. Weapons used by the appellants-accused are Tangi, a sharp-cutting instrument and lathi. There are number of injuries upon the deceased by these weapons. Injuries No. 1 to 4 are capable of being caused by tangi which was used by appellant No. 1 (original accused No. 2) and the weapon lathi was used by appellant No. 2; (original accused No. 1). Injury No. 5 is capable of being caused by lathi. The sternum was broken from middle. The medical evidence is Corroborative to the depositions of the eye-witnesses. Looking to the deposition of P.W.8, weapons were recovered, blood-stained earth was also found out at the field, dead-body was also lying in the field. Thus, there is enough corroboration to the depositions of the eye witnesses. It is also submitted by the learned Counsel for the complainant that in FIR though name of Kuldip was not referred, but, there is a reference of one unknown person. Thus, looking to the FIR, there is a genesis of

appellant No. 2. Informantis not a eye-witness. Informantis P.W.3, who has got information from other eye-witnesses, but, looking to the depositions of P.W.6 and P.W.7, who are the eye-witnesses, they have given the name of appellant No. 2 i.e. of Kuldip, weapon is also narrated which was in his hand and looking to the medical evidence, there is n corroborative injury i.e. injury No. 5 otherwise, also FIR is a rough sketch of the whole incident and not an encyclopedia of the whole incident.

5. It is submitted by the learned Counsel for the prosecution that the land dispute is also not helpful to the accused for giving any benefit because nowhere it has been brought on record that accused persons were in possession of the land in question. On the contrary, they came from a different place with weapons, in their hand, and they chased deceased-father and his son-P.W.6. Son escaped and the father was assaulted and he was assaulted so severely that he expired on the spot in the field whereas the victim''s side had no weapon in their hand. They were not aggressors. This aspect of the matter has been properly appreciated by the trial Court and no error has been committed by the trial court in convicting the appellants-accused for the offence of murder of the deceased and, therefore, this appeal deserves to be dismissed.

It is further submitted by Additional Public Prosecutor that the date of incident is 30th of March, 1989, at about 7:30 a.m. Immediate is the FIR i.e. on the same day at about 11:00 a.m. and it was given by P.W.3 and the name of appellant No. 1 is already there in the FIR, whereas appellant No. 2 is referred as unknown person. The case of the prosecution is based upon the depositions of eye-witnesses, who are P.W.6 and P.W.7. They have clearly narrated the whole incident and have pointed out that both these accused persons came in the field of the deceased where his son was also present and they were ploughing the field. The accused persons came with the weapons i.e. tangi and lathi. They chased deceased and his son and assaulted the deceased, who expired on die spot looking to the medical evidence also, there is enough corroboration to the depositions of eyewitnesses. P.W.7 has also seen the whole incident, who was in the nearby field. Dead-body was found from the field of the deceased, as per the investigation officer''s depositions as P.W.8., weapons and blood-stained earth was also found out from the place of scene of offence. P.W.6 and P.W.7 are natural and competent witnesses and, therefore, they are believable and trustworthy and reliable witnesses. He has also accepted arguments canvassed by the learned Counsel who has appeared on behalf of the informant and as per the learned Additional Public Prosecutor, no error has been committed by the trial court in convicting the appellants-accused for murder of the deceased and the appeal deserves to be dismissed.

6. Having heard learned Counsel for both sides and looking to the evidences on record, it appears that the whole incident has taken place on 30th of March, 1989 at about 7:30 a.m. in the field where the deceased Tirsus Ekka and his son Barned Ekka (P.W.6) were preparing ridge (merhh) and they had gone with spade and axe in their

field and at that time. As per the FIR filed by P.W.3, accused persons came with tangi (sharp cutting instrument) and lathi (hard and blunt substance) in their hands: Appellant No. 1 is named in the, FIR, who was having a weapon i.e. tangi in his hand and appellant No. 2 is narrated as unknown person, who was having a lathi in his hand. As per the FIR (Exhibit.2), injuries were caused at the vital part of the body of the deceased, who succumbed to the injuries on the spot. FIR is on the same day at about: 11:00 a.m. Thus, immediate is the filing of FIR by P.W.3. Looking to the deposition of P.W.3, he has narrated that the got information from P.W.4 who is the wife of the deceased and also from: P.W.6 who if an eye-witness of the incident and son of the deceased who had accompanied his father in the field.

7. Looking to the deposition of P.W.6 (Barned Ekka), who is an eyewitness of the whole incident and son of the deceased, who had gone in the field with his father in the morning; hours for preparing ridge and to plough the field, when they were in their field, it is stated by this witness that appellant No. 1 came with tangi in his hand and appellant No. 2 came with lathi in his hand. They chased the P.W.6 and the deceased (both son and father). They assaulted the father of P.W.6, who is Tirsus Ekka and caused injury upon Tirsus Ekka, who expired on the spot in the field, whereas P.W.6 became successful in running away from the field. He saw this incident and saw his father being murdered by the appellants-accused. He came running to his house, which is at a half kilometer distance and informed his mother Smt. Rajina Tirkey, who is P.W.4. Thus, looking to the deposition of P.W.6, he has accurately narrated the whole incident i.e. the names of the persons, the nature of weapons in their hand, the place of scene of offence and the manner, in which the whole incident has taken place. Looking to his cross-examination, nothing is coming out in favour of the appellants-accused. It is contended by learned Counsel for the appellants that P.W.6 is a child witness and therefore, no much reliance should have been placed to his evidence. This contention is not accepted by this Court, looking to the fact that P. W.6 was aged about 12 years at the relevant time and was matured enough and capable enough to give the evidence before the Court. Evidence was given in the Year 1993, and at that time he was approximately 16 years of age. He was present in the field along with his father. His presence is natural at the scene of offence. He has seen the whole incident and looking to his cross-examination also nothing is coming out in favour of appellants-accused. Thus, he is a natural, competent, reliable and trustworthy eye-witness and we see no reason to disbelieve this eye-witness, especially, when there is enough corroboration to his evidence by the depositions of other eyewitnesses as well as by medical evidence also.

8. Looking to the deposition of P.W.7 (Matius Xess), who was ploughing his field situated nearby: and who has also seen the whole incident he has named both the accused and he has also narrated that both the appellants came with weapons in their hand i.e. tangi as well as lathi. Both the appellant & accused chased the deceased and his son and caused injuries upon the deceased, who expired on the spot He has also stated that he had gone the house of the deceased and thereafter

he had came back again in the Add along with other persons, where the dead-body of die deceased was lying. Looking to the cross -examination, nothing is much coming; out in favour of the appellants-accused, except the fact of civil dispute about the land which is also not much helpful to the appellants, mainly for the reason that appellants-accused were never in possession of field in question They came altogether from a different place where the deceased and son was ploughing the field. They came with weapons in their hand. They chased the deceased and his son, caused severe injuries upon the deceased. A number of injuries have been caused by the appellants-accused and the injuries were so severe in nature that deceased expired on the spot in the field itself. Thus, looking to the cross-examination, though civil dispute is coming on record between the parties, we do not find that, P.W.7 is not a reliable witness. On the contrary, his presence nearby scene of offence is a natural one. He was also ploughing his field Place of scene of offence is a field and therefore, it was clearly visible and was never obstructed by any building or super-structure. His deposition is corroborative to the deposition of P.W.6, an eye-witness, and still there is other corroboration by the depositions of other eyewitnesses. Thus, P.W.7 is also a natural, reliable and trustworthy witness.

9. Looking to the deposition of P.W.4, who is wife of the deceased, she has stated in her deposition that her son Barned Ekka (P.W.6) came running to the house on 30th of March, 1989, in the morning hours and informed that his father (husband of P.W 4) was assaulted by appellant by tangi and lathi and his father has been murdered. This information was given to P.W.3 also who lodged the FIR before the Police. Thus, P.W.3 is not an eye-witness, but, she is a witness before whom immediately the eye-witness, (P.W.6) has narrated the whole incident. Thus, there is enough corroboration to the depositions of P.W.6 and P.W.7 by the deposition of P.W.4. Looking to her cross examination also nothing is coming out in favour of the appellants-accused. Though she is a rustic witness, she has given clear evidence without any exaggeration.

10. Looking to the deposition of P.W.1 who is Dr. J.K. Sanga and who has carried out the Post-mortem of the deceased on 31st of March, 1989, which is marked as Ext.1, he has observed the following injuries.-

1. Incised wound over mid forehead 3" x 1" x 3" brain matter coming out.

2. Incised wound over face cutting lower lip and mandible 3" x 1" x 3" lower cirosis came of left side broken.

3. Incised wound below left eye 3" x 1" x 3" cutting maxillary bone.

4. Incised wound below left side of mandible 3" x 1" x 3" cutting mandible.

5. Bruises over front of chest six in. number each about 1" x 1". The sternum was broken in the middle. AH the (injuries were grievous in nature. Injury No. 1, 2, 3 and 4 are caused by same sharp cutting weapon e.g. Tangi injury No. 5 was caused by a

hard blunt substance e.g. Lathi Injury No. 1 was sufficient to cause death in ordinary course of nature. Cause of death shock and hemorrhage. Time elapse since death within two days.

Thus, looking to the aforesaid injuries, it has been stated by P.W. 1 that injuries No. 1 to 4 are capable of being caused by sharp-cutting instrument i.e. tangi whereas the injuary No. 5 is capable of being caused by hard and blunt substance like lathi. Looking to these injuries, he has opined that injury No. 1 was sufficient, in the ordinary course of nature, to cause death of the deceased. These injuries are at the vital part of the body. Brain matter had also come out because of injury No. 1. In fact, injury No. 5 is consisting of six injuries on chest and the sternum bone was broken from the middle. Thus, looking to the medical evidence there is enough corroboration to the depositions of the eye-witnesses (P.W.6 and P.W.7). Grievous injuries have been caused by the appellants-accused.

11. Looking to the deposition of P.W.-8, who is Bhaiya Lal Singh and who is the Investigating Officer, he has collected blood-stained earth from the scene of offence dead-body was also lying in the field as per inquest panchnama (Ext.3), prepared by this witness. Weapon tangi and broken lathi was also recovered by this Investigating Officer which at Exi.6. Thus, looking to the depositions of this P.W.8, Investigating Officer, there is enough corroboration to the deposition of the eye-witnesses P.W.6 and P.W.7. So far ass place of scene of offence is concerned, blood-stained earth and the weapons i.e. tangi and broken lathi were also found from the scene of offence.

12. Thus, looking to the overall depositions of the prosecution witnesses, as stated, here-in-above, appellants-accused came on 30th of March, 1989, in the morning hours where father and son i.e. deceased and P.W.6 were preparing ridge and ploughing their Held. They came with sharp cutting weapon as well as lathi in their hand. They chased father and son both, assaulted father, and the son became capable of being escaped. The father was beaten so severely that he expired on the spot P.Ws.6 & 7 are the eye-witnesses who are reliable and trustworthy. Looking to the deposition of P.W.I which is medical evidence corroborative to the depositions of eye-witnesses, no error has been committed by the trial court in convicting the appellants-accused. Prosecution has proved offence of murder of the deceased beyond reasonable doubt The contention regarding no reference by name of accused-Kuldip, in the FIR, is of no help to accused for the following reasons:

(a) The FIR has a reference of appellant-accused No. 1 by name and Kuldip is referred as unknown person. Thus, there is a genesis of Kuldip accused in the FIR;

(b) The FIR is a rough sketch of the incident and not an encyclopedia of the whole incident

(c) HR was filed not by an eye-witness, but it was filed by P.W.3, who was informed by P.W.4. On the contrary, looking to the ITR, it is absolutely natural and wit lout any unnecessary, exaggeration. Rustic witness may have a tendency to exaggerate, but,

looking to deposition of this witness P.W.3, we are of the opinion that the FIR is absolutely a natural and without any exaggeration the whole incident has been narrated and we do not expect mathematical accuracy from P.W.3, who is not an eye-witnesses, in the FIR. FIR puts the especially law in motion. Any body can file FIR, especially, in the murder case. On the contrary, enough details have been given in the FIR and as stated here-in-above, there is no addition of the accused subsequently. Accused-Kuldip was already referred in the FIR, but, the name was not known and, therefore, he is referred as unknown person. But, there is no ambiguity about accused-Kuldip and weapon used by him and also about the place of offence;

(d) Looking to the deposition of P.W.6 who is an eye-witness, he has clearly given the name of accused-Kuldip along with the name of appellant No. 2. He has also stated weapon in his hand, assault by him upon the deceased and the medical evidence given by P.W. 1 is corroborative to the deposition of P.W.6, especially, by injury No. 5;

(e) Looking to die deposition of P.W.-7, who is also an eyewitness and who was working in me nearby field in the morning hours, he has also given the names of both the appellants-accused and the weapons in their hand. Thus, there is a clear reference of accused-Kuldip even by this P.W.7;

(f) P.W.6 had gone his house running, where he narrated the whole incident before his mother-P.W.4. Looking to the deposition of P.W.4 also, she has stated that appellant No. 2 as well as Kuldip, who is appellant No. 1 has caused injuries by tangi and lathi upon the father of P.W.6. Thus, though she is not an eye witness, yet she is a witness before whom the eye-witness has narrated the whole incident, first in point of time and immediately. Thus, merely because the name of Kuldip Singh is not referred in the FIR a benefit of doubt should be given to this accused, Kuldip Singh, is not accepted by this Court, mainly for the aforesaid reasons as he has been referred, unambiguously and unequivocally by the eyewitnesses.

13. It is also contended by the appellants-accused that there was a civil dispute between the parties and, therefore, they have been wrongly roped in the offence. In fact, they have never committed any offence. This contention is not. also accepted by this Court, looking to the evidences on record, especially that deceased and his son were in possession of the field; It is never brought on record by the appellants-accused that accused were in possession of the field, in question. In a criminal case, we are concerned with the injuries caused by the appellants-accused with the weapons used by them. Civil dispute may be there, but, the fact remains that deceased was in possession of the field and was preparing ridge and ploughing his field along with his son-P.W.6 and at that time on 30th of March, 1989 at 7:30 a.m., accused persons came from distant place with a sharp-cutting instrument i.e. tangi and lathi in their hand with a definite intention in their mind, They chased the deceased and his son and assaulted the deceased causing several injuries as stated

by Dr. J.K. Sanga P.W.1 and beaten him so severely that the deceased expired on the spot and thereby put their attention the practice. This, it is premeditated action, with full mens rea. Thus, civil dispute is not much helpful to the appellants-accused. Secondly, there were no weapon 3 in the hand of the victim nor in the hi and of P.W.6 who is a son of the deceased. Deceased and his son were not aggressors. On the contrary, looking to the evidences of P.W.6 and P.W.7, appellants-accused were aggressors who accaused injuries by chasing the deceased. Thus, this contention of a civil dispute is also not at all helpful to the appellant-accused, looking to the evidences on record.

14. As a cumulative effect of the aforesaid evidences, we are also of the opinion that prosecution has proved an offence of murder of deceased by the appellants, beyond reasonable doubt. No error has been committed by the trial court in appreciating the evidences on record and in convicting the appellants-accused for the offence punishable u/s 302 to be read with Section 34 of the Indian Penal Code. Both the appellants-accused came together with weapons in their hands, assaulted by chasing the deceased. Thus, they were sharing common intention. Injuries are also tallying with the deposition given by P.W. 1, and also looking to the post-mortem report (Ext. 1). Thus, there is no substance in this Criminal Appeal and, therefore, we upheld the judgment and order of conviction and sentence passed by the trial court. This appeal is, therefore, dismissed.