Khadi Oraon Vs State of Bihar

Court: Jharkhand High Court

Date of Decision: Nov. 22, 2002

Acts Referred: Penal Code, 1860 (IPC) â€" Section 302

Citation: (2003) 1 JCR 291

Hon'ble Judges: Vinod Kumar Gupta, J; Lakshman Uraon, J

Bench: Division Bench

Advocate: Ajay Poddar and Ram Prakash Singh, for the Appellant; Anita Sinha, APP, for the Respondent

Final Decision: Allowed

Judgement

Vishnudeo Narayan, J.
This appeal has been directed by the sole appellant named above against the impugned judgment dated 31.5.1991

passed by Smt. Shakuntala Sinha, 7th AJC Ranchi in Sessions Case No. 497 of 1990 whereby and whereunder the appellant was found guilty for

the offence punishable u/s 302 of the Indian Penal Code and he was convicted and sentenced to undergo R.I. for life and also to pay a fine of Rs.

500/- and in the default thereof R.I. for two months.

2. The prosecution case has arisen on the basis of the fardbeyan (Ext. 3) of PW 3, Budhram Uraon, the son of Gopi Uraon the deceased of this

case recorded by S.I., I.S. Prasad of Chanho P.S. at State Dispensary, Chanho on 29.5.1990 at 00.40 hours regarding the occurrence which is

said to have taken place at the house of the informant in village Hurhuri, P.S. Chanho, District Ranchi on 28.5.1990 at 7.00 p.m. PWs 1 and 2 are

the witness of the fardbeyan (Ext. 3) and their signatures thereon are Ext. 1/2 and 1/3 respectively. The said FIR was drawn on 29.6.1990 at 1.30

hours which was received in the Court of the Magistrate empowered to take cognizance on 29.5.1990.

3. The prosecution case, in brief, is that the appellant Khadi Uraon and Gopi Uraon, the deceased of this case are full brothers and the appellant

was residing in the old ancestral house where the deceased had gone with his cow and bullock to tie there in the old house which was protested to

by the appellant and it led to an altercation between the deceased and the appellant. It is alleged that, thereafter, the appellant brought a tangi (axe)

from his house all of a sudden and gave a blow on the head of the deceased causing bleeding injury and the deceased fell down and became

unconscious. It is further alleged that, thereafter, the appellant also ran with the tangi (axe) to assault the informant who fled away from there to his

house and informed in respect thereof to the inmates of his house. It is also alleged that the informant in the company of the villagers again came to

the place of occurrence and brought his unconscious father on a cot to the Chanho hospital and in course of treatment his father Gopi Uraon died

in the hospital.

4. The appellant has pleaded not guilty to the charge levelled against him and claims himself to be innocent and to have committed no offence and

that he has been falsely implicated in this case.

5. The prosecution has examined seven witnesses to substantiate this case. PW 3, Budhram Uraon is the son of the deceased and the informant of

this case and his fardbeyan is Ext. 3 and his signa- ture thereon is Ext. 1/4. PWs 1 and 2 are the witnesses on the Inquest Report as well as on the

fardbeyan of the informant and their signature thereon are Ext. 1, 1/1, 1/2 and 1/3. PW 4, Kapildeo Singh and PW 5 Budhu Uraon are heresay

witnesses of the occurrence in question but PW 5 has turned hostile. PW 6, Dr. Chandra Shekhar Prasad has conducted the post-mortem

examination on the dead-body of Gopi Uraon, the deceased the post-mortem examination on the dead-body of Gopi Uraon, the deceased of this

case and the post-mortem report is Ext. 2 in this case. PW 7, Shambhu Saran Prasad is the I.O. of this case who has proved the fardbeyan (Ext.

3), the formal FIR (Ext. 4) and the Inquest Report (Ext. 5). No oral and documentary evidence has been adduced on behalf of the defence.

6. In view of the evidence oral and documentary on the record the learned Court below has come to the finding of the guilt of the appellant and has

convicted and sentenced him as stated above.

7. Assailing the impugned judgment as unsustainable it has been submitted that there are innumerable infirmities in the prosecution case and the

learned Court below has failed in scrutinizing the evidence meticulously in proper perspective and has erred in coming to the finding of the guilt of

the appellant. It has been submitted that there is no legal evidence at all on the record to establish the place of the alleged occurrence and the

solitary testimony of PW 3, the highly interested and partisan witness uncorroborated in material particular by any other evidence on the record

and also replete with inherent improbabilities is fit to be brushed aside and PW 3 has no occasion at all to witness the occurrence. It has also been

submitted that the medical evidence on the record is at variance with the manner of the occurrence as alleged which is sufficient in itself to belie the

prosecution case. It has also been submitted that the fardbeyan Ext. 3 of the informant is hit under the provisions of Section 162 of the Cr PC in

view of the fact that an information regarding the occurrence has already been recorded by the Chanho police as per the statement of Jagdeo, the

chowkidar and the Station Diary Entry in respect thereof has been reduced into writing but the said Station Diary Entry has not been brought on

the record by the prosecution for the reasons best known to it and as such there is no basis at all for the prosecution in this case to proceed and

the fardbeyan of the informant cannot be acted upon as the basis of this case. An alternative argument has also been submitted by the appellant that

it is not a case u/s 302 of the Indian Penal Code rather the occurrence has taken place as alleged as per the spur of the moment and the assault is

not intentional with any premeditation and, therefore, the offence may fall under the ambit of Section 304 of Part 2 of the Indian Penal Code.

8. The learned APP has submitted that it is evident from the materials on the record that no person of the village had come to the place of

occurrence during the commission of the occurrence and as such the presence of any independent witness is totally ruled out in the facts and

circumstances of this case and PW 3 is the most competent and natural witness of the occurrence as he was present at the place of occurrence

along with his father at the time of the occurrence and the appellant has also chased him with intention to assault him after the assault perpetrated

on the head of the deceased. It has also been submitted that in the facts and circumstances of this case the assault on the head of the deceased by

tangi (axe) by the appellant is an intentional one to, commit his murder. Lastly it has been contented that the learned Court below has rightly come

to the finding of the guilt of the appellant.

9. PW 6, Dr. Chandra Shekhar Prasad has deposed to have conducted the post-mortem examination on the dead body of the deceased Gopi

Uraon and he has found the following ante-mortem injuries on the dead-body of the deceased :

(i) 2 1/2"" x 1 cm on the left chest back situated 3 cm left to midline and cutting the soft tissue including left 6th rib.

(ii) 5 1/2 x 2cm on the right fronto parietal region of head situated anterior posterialy cutting the underline bone and brain matter. A portion of the

brain matter was protruding out of through the wound. A crack fracture is extending from posterior and of above noted cut injury over the right

parietal bond and the fracture line ends near the sagittal suluie. There was presence of blood and blood clot in the cranial cavity.

The medical witness has further deposed that the aforesaid ante mortem injuries were causing by heavy sharp weapon such as tangi and, death was

due to the head injury and the said injury was grievous and fatal to life. According to the medical witness time elapsed since death is 6 to 24 hours

from the time of the post-mortem examination.

10. According to the prosecution case the place of occurrence is the ancestral house of the appellant and the deceased of this case. PW 3 in para

1 of his evidence has deposed that the deceased had gone with him to the cattle in the ancestral house in which the appellant was residing where

altercation took place between the deceased and the appellant and the appellant assaulted the deceased by tangi (axe) on his dead. Therefore, the

place of occurrence as per the evidence of PW 3, the informant is the old ancestral house of the appellant and the deceased. PW 7, the I.O. in his

evidence has deposed that the place of occurrence is in front of the house of the deceased on the village public road and not the old ancestral

house. The I.O. has further deposed that he has not found anything incriminating at the alleged place of occurrence. The I.O. in para 10 of his

cross-examination has deposed that the informant had two houses and in the other house he did not find any sign of occurrence having taken place

there. PW 3 in para 4 has deposed that the deceased has constructed a new house about a year ago and the old ancestral house was constructed

by the father of the appellant and the deceased in which there were four rooms. Therefore, the new house of the informant is definitely not the

place of occurrence in view of the evidence on the record. PW 3 has further deposed that there was copious blood fallen at the place of

occurrence but surprisingly enough the I.O. has not found a drop of blood at the alleged place of occurrence. Therefore, there is no legal evidence

at all on the record to establish the place of occurrence of this case. PW 3 claims himself to be the ocular witness of the occurrence and as per the

prosecution case assault on his father was perpetrated in his presence by tangi (axe) by the appellant. According to the prosecution case one blow

on the head of the deceased is said to have been given by the appellant. The prosecution case as averred in the fardheyan (Ext. 3) does not

whisper regarding the second blow on the person of the deceased at the place of occurrence.

11. PW 3 in his evidence on oath has categorically deposed that the appellant gave a blow by tangi (axe) on the head of the deceased and,

therefore, he ran to assault him and he fled away from there and came to his house. Surprisingly enough PW 6, the medical witness has found two

incised wound on the person of the deceased as stated above. Therefore, the medical evidence is not in conformity with the manner of the

occurrence as alleged by the prosecution rather the medical evidence is in conflict and inconsistent with the alleged manner of occurrence as

averred in the fardbeyan (Ext. 3) and as deposed by PW 3, the informant. In view of this inherent inconsistencies in the manner of prosecution case

and in view of the medical evidence on the record it appears that PW 3, the informant has no occasion to witness the occurrence in question and

he, can never be termed as ocular witness of the occurrence. There is also no corroboration of the solitary testimony of PW 3 by any other

independent, natural and competent witness of the occurrence specially when there are several houses in the close vicinity of the place of

occurrence. Therefore, the material discrepancy between the prosecution case and the medical evidence regarding the number of the injuries cast a

cloud of suspicion to the very credibility of the prosecution case and PW 3 cannot be said to be an eye-witness of the occurrence and in this view

of the matter his testimony is fit to be brushed aside. It therefore, appears that there is no legal evidence at all on the record to substantiate the

prosecution case beyond all reasonable doubts. Thus the alternative argument regarding the applicability of Section 304 Part 2 of the Indian Penal

Code in the facts and circumstances of this case as well as the infirmity regarding the validity of the fardbeyan (Ext. 3) of the informant has lost all

its relevancy. The learned Court below did not scrutinize the evidence on the record meticulously and has erred in coming to the finding of the guilt

of the appellant. Therefore, the impugned judgment suffers with illegality requiring an interference therein.

12. There is merit in this appeal and it succeeds. The impugned judgment is hereby set aside. The appellant is found not guilty of the charge levelled

against him and he is hereby acquitted. The appellant is also discharged from the liability of the bail bond.

Lakshman Uraon, J.

13. I agree.