
(2003) 09 JH CK 0060

Jharkhand High Court

Case No: Criminal Appeal No. 156 of 1996 (R)

Suresh Bhagat and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Sept. 4, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 34

Citation: (2003) 4 Crimes 498 : (2003) 3 BLJR 2069

Hon'ble Judges: Hari Shankar Prasad, J; Amareshwar Sahay, J

Bench: Division Bench

Advocate: Laljee Sahay and Arun Kumar Sinha, for the Appellant; D.K. Prasad, Assistant Public Prosecutor, for the Respondent

Judgement

Amareshwar Sahay, J.

The three appellants along with one Niraj Kumar (since acquitted) were Charged under Sections 302/34 of the Indian Penal Code for committing the murder of Permashwar @Tepara. Oraon.

2. The trial Court i.e. Additional Sessions Judge, Gumla vide his judgment dated 12-9-1996 in ST. No. 298 of 1995, convicted the present three appellants, finding them guilty u/s 302/34 of the Indian Penal Code and sentenced them to undergo Rigorous Imprisonment for life. The fourth accused, namely, Niraj Kumar, was however, not found guilty by the trial Court and thereby he was acquitted.

3. Being aggrieved by the said judgment of conviction and sentence by the trial Court, the appellants have preferred the present appeal challenging their conviction and sentence.

4. The First Information Report was registered on 2-7-1995 by Ghaghra Police within the district of Gumla against the appellants and one another on the basis of the Fardbeyan of Ghuneshwar Sahu. The informant, Ghuneshwar Sahu alleged in the

First Information Report that on 1-7-1995 at about 8 p.m. he was sitting in his house after returning from Puto fair along with Bhaura Sahu (P.W. 4). At that time there boys i.e. appellants and one Niraj Kumar (since acquitted) came there and appellant No. 3. Sahbir Oraon demanded "Haria." and said that today they will commit the murder of Tepra Oraon (deceased). At that very movement Tepra Oraon also came there and sat on the "Chowki" in front of the house of the informant. Thereafter, Suresh Bhagat, appellant No. 1 caught hold of him and took him towards the road and then all the four persons started assaulting Tepra Oraon with fists and legs. The informant further alleged in the Fardbeyan that those persons left Tepra Oraon on the road and started shouting that Tepra Oraon has been dashed by a truck and thereafter they fled away. The injured Tepra Oraon was lifted from the road was kept in front of the Cycle shop of Moti. The informant and: Puno Sahu went to call a Doctor. When they came to the spot along with the Doctor they found that Tepra Oraon was already dead. It is further stated in the Fardbeyan that before his death, Tepra Oraon had disclosed the name of the appellants who had assaulted him.

On the basis of the Fardbeyan, the police registered a case u/s 302/34 of the Indian Penal Code and after submission of the charge sheet all the four accused persons including the appellants were sent up for trial.

5. In order to establish the charges against the appellants, all together seven witnesses were examined on behalf of the prosecution and two witnesses were also examined on behalf of the defence.

6. The learned trial Court, after considering the materials on record convicted and sentenced the appellants and acquitted 4th accused, Niraj Kumar as stated in earlier paragraph.

7. P.W. 1 is Somari Orarn, who is the mother of the deceased Tepra Oraon. She, in her examination in chief, has stated that appellants No. 1 and 2. Suresh Bhagat and Bandhan Oraon came to her house and informed her that her son was on the verge of the death in Shashan Toli. She at once ran to that place and found her son Tepra Oraon lying on the road of Shashan Toli. She further stated that her son Tepra Oraon told her that the three appellants, Suresh Bhagat, Bandhan Oraon and Sahbir Oraon have assaulted him. In her cross-examination, she has made it clear that when she reached at the spot, her son was still alive and in her presence the injured Tepra Oraon succumbed to the injuries. She denied the suggestion put by the defence that her son died due to dash by a truck.

8. P.W. 2 is the Doctor who held the post mortem examination on the dead body of the deceased, Tepra Oraon. In his evidence Doctor has stated that out of 8 injuries found on the person of the deceased, injury Nos. (III), (IV) and (VIII) were grievous in nature which were sufficient to cause death in ordinary course of nature and deceased died due to above injuries. For ready reference injuries No. (III), (V) and (VIII) are quoted herein below:--

(III) Avulsion and separation of left lateral upper incised teeth.

(V) Bruise size 5"x3" over left side of chest with fracture of 4th and 8th ribs with tear and ruptured of lung blood was present in thoracic cavity.

(VIII) Bruise 6"x5" over right side of the chest with fracture of 4th to 8th ribs with tear and rapture long, blood was present in thoracic cavity.

9. P.W. 3 is the informant, Ghuneshwar Sahu. In his evidence this witness has stated that Tepra Oraon was taken by the appellants and after a short while the appellants came running and shouting that Tepra Oraon was dashed by a truck. When the informant rushed to the spot. Several persons had already assembled there, then the informant went to call a Doctor, and by the time, he came with the Doctor, Tepra Oraon, after giving his statement, succumbed to the injuries. The mother of Tepra Oraon (P.W. 1) told him that before death, Tepra Oraon had disclosed the names of these three appellants as his assailants.

The defence has not been able to take out any thing from this witness in his cross-examination so as to discredit him.

10. P.W. 4 is Bhaaura Sahu is the "Sarhu" of P.W. 3. According to the prosecution, he was sitting with the informant, P.W. 3 at the relevant time, when the appellants had taken Tepra Oraon with them. This witness has fully corroborated the statements of the P.W. 3, the informant.

11. P.W. 5 Rajendra Nath Rai and P.W. 6, Patti Nath Rai are independent witnesses who have also supported the prosecution case.

12. Nothing significant has been pointed out by the learned counsel for the appellants so as to make out the evidence of P.Ws. 1, 3, 4, 5 and 6 to be unreliable.

13. P.W. 11 is the Investigating Officer.

14. Mr. Laljee Sahay learned counsel for the appellants has stressed much on the point that the case of the prosecution is improbable and unbelievable. He submits that it was a dark night and therefore, it was not possible for any one to identify any of the accused/appellant.

15. But in view of the clear statement of the prosecution witnesses wherein they have stated that the appellants assaulted the deceased at the time and place of occurrence and after assaulting, they spread rumour that deceased was dashed by a truck, the argument of the learned counsel for the appellants cannot be accepted and hence it is rejected. The evidence of the prosecution witnesses is fully corroborated by the evidence of Doctor who found injuries on the person of the deceased. Therefore, in our opinion, the prosecution has been able to prove that the deceased died due to the injuries inflicted on him by the three appellants.

16. Now an important question is to be considered in this appeal, as to whether in view of the statements of the witnesses, can it be said to be a case in which, the appellants could have been convicted and sentenced for committing the offence u/s 302/34 of the Indian Penal Code.

17. In view of the discussions of the evidence of the prosecution witnesses, as stated in earlier paragraph, it is clear that the appellants assaulted Tepra Oraon by fists, slaps and legs but they left him on the road, in injured condition knowing fully well that he was not dead at that time. It is further significant to note that after assaulting Tepra Oraon, they informed the informant as well as the mother of the deceased. P.W. 1 that Tepra was lying on the road. It is further relevant to mention here that it is not the prosecution case that the appellants were armed with any deadly weapons or any weapons rather specific case of the prosecution is that Tepra Oraon was assaulted only with fists, slaps and legs and therefore, it can very well be inferred from the evidence of the prosecution itself, that intention of the appellants were not to cause death of Tepra Oraon rather the assault was made by them to cause such bodily injuries, which was likely to cause death but without any intention to kill him. Therefore, in our view the case falls within the ambit of u/s 304, Part II/ 34 of the Indian Penal Code and not Section 302/34 of the Indian Penal Code.

18. In view of our discussion and findings above, we hold that the conviction of the appellants u/s 302/34 of the Indian Penal Code cannot be sustained and in the facts and circumstances of the case.

19. Accordingly, conviction and sentence u/s 302/34 of the Indian Penal Code against the appellants are hereby set aside and they are found guilty for committing the offence u/s 304, Part II/34 of the Indian Penal Code and they are convicted thereunder.

20. So far as the sentence is concerned, it appears that the appellants have remained in custody since the date of their arrest in July 1995 i.e. for more than 8 years and therefore, for the ends of justice the appellants are awarded the sentence for the period already undergone by them in custody.

21. In the result this appeal is dismissed with the above mentioned modification in conviction and sentence. The appellants, who are in jail, are directed to be released forthwith, if not wanted in any other cases.