

(2004) 09 JH CK 0045

Jharkhand High Court

Case No: Criminal Appeal No. 59 of 1994 (R)

Subhas Oraon @ Tehna and
Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision: Sept. 22, 2004

Acts Referred:

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

Citation: (2004) 3 BLJR 1889

Hon'ble Judges: S.J. Mukhopadhyaya, Acting C.J.; N.N. Tiwari, J

Bench: Division Bench

Advocate: A.K. Chaturvedi and K.K. Mishra, R.C.P. Sah and C.A. Bardhan, for the Appellant;
Manjusri Patra, APP, for the Respondent

Final Decision: Allowed

Judgement

N.N. Tiwari, J.

This appeal is against the judgment of conviction and order of sentence dated 22.3.1994 passed by the 2nd Additional Sessions Judge, Gumla in S.T. No. 184/1988, whereby the appellants have been found guilty for the offence under Sections 302/34, IPC and they have been sentenced to undergo RI for life.

2. Briefly stated the prosecution case is that on 22.4.1987 Jitia Oraon alongwith Kura Oraon (deceased), Karamdeo Oraon and Shambhu Munda were ploughing paddy field of Kura Oraon. At about 4.30 p.m. Subash @ Tehna Oraon, Soma Oraon, Ghura Oraon, Mangra Oraon, Khoras Lakra, Lohra Oraon, Kario Oraon and Suka Orain arrived there variously armed with weapons. Subash @ Tehna Oraon and Ghura Oraon were holding Bhujali, Khoras Lakra was armed with Balua, Soma Oraon and Mangra Oraon with Tangi and Kario Orain and Suka Orain were having stones in their hands. All the said persons surrounded Kura Oraon and Ors. Subash @ Tehna

Oraon abused Kura Oraon and forbade him from ploughing the land and then gave Bhujali blow on his temple. Kura fell down. Subash hit him on the stomach and the others also thereafter joined them and assaulted Kura with the weapons held by them. They also attempted to assault the informant and his companions. It was alleged that the land in question was in dispute and the matter was in the Court in which the judgment has been earlier passed in favour of Kura Oraon.

3. The police after completing investigation submitted charge sheet against all the eight accused persons named in the FIR including the appellants under Sections 147, 148, 149 and 302, IPC.

4. In order to bring home the charges, the prosecution has in all examined nine witnesses. PW-1 Jitwa Oraon is the informant and he is the nephew of the deceased. In paragraph 2 of his deposition this witness has stated that Subhas cut the neck of Kura Oraon with Bhujali and that he had given two Bhujali blows. In paragraph 9 this witness has stated that as soon as Subhas hurled Bhujali, he fled away. His other companions had already escaped. PW 2 Basudeo Oraon is the son of the deceased. He stated that he was informed about the incidence at Gumla. When he received the information, he got the paper prepared by his lawyer, Bhubneshwar Babu, signed the same and handed over to the Dy. S.P. PW 3 Shambhu Munda is the friend of the deceased's son Karamdeo. He claimed to be an eyewitness of the occurrence. He has stated that Tehna assaulted Kura with Bhujali on his temple. Other seven persons also assaulted him. They were not known to him. In his cross-examination this witness has stated that at first Tehna had come alone. He had not named other persons. He corroborated fleeing away of Karamdeo towards east and Jitwahan towards west. PW 4 Karamdeo Oraon is the son of the deceased. He claimed that he saw the alleged occurrence from 80-90 yards. He admitted that Shambhu Munda (PW 3) is his friend and on that day he had gone to his village. He alleged that there was land dispute which led to the occurrence. He also stated that at the time of occurrence he did not raise alarm. He went to Gumla along with Sambhu and Jitwahan but did not tell about the occurrence to anybody. In paragraph 8 he has stated that Soma and Ghura were not present in the village on that day. PW 5 Goshnar Kujur has been declared hostile. PW 6 Bishram Kujur has been tendered and not supported the prosecution case. PW 7 Lalan Bhagat is the witness to the inquest report and he proved Ext. 1/3. He saw a cut injury on the neck of the deceased. PW 8 Ram Pukar Singh is the IO of this case. He proved the fardbeyan (Ext. 2). According to him place of occurrence is about 200 yards from the village and that the dead body of the deceased was found on a Parti field (barren land). He has stated that the place of occurrence was Plot No. 591 named Pindardohar. He further stated that on search, no arm was recovered from the houses of the appellants. PW 9 Dr. J.P. Sanga conducted postmortem examination on the dead body of Kura Oraon. He found altogether four incised wounds and three bruises. In his opinion, the injury Nos. 3 and 4 were grievous in nature and rest were simple in nature. According to him time elapsed since death was nearly 2

days. Postmortem examination report is Ext. 5. In his opinion, injury Nos. 1-4 could be caused by weapon like Bhujali and others injuries by sticks.

5. The defence also examined five witnesses in order to support their defence, DW 1 Ghura Oraon is the accused appellant No. 2. He stated that he was in Defence Service for about 20 years and he is an Army pensioner. On 22.4.1987 (the date of occurrence) he had gone to Ranchi to draw his pension as the same is given after comparing the photograph of the pensioner from the pension book. Ext. C is the Pension book proved by DW 5 Arjun Pandey which shows withdrawal of pension from Ranchi S.B.I. on 22.4.1987. DW 2 Kaleshwar Parasad Sahu is a contractor who had taken contract of digging four wells. He stated that the appellant No. 3 Khoras Lakra was working at his work site on the date of alleged occurrence from 8 a.m. to 5 p.m. According to him the place of occurrence is about 1 KM away from that place. DW 3 is Khoras Lakra accused-appellant No. 3. He stated that he was working at the site of the DW 2 on the date of occurrence from 8 a.m. to 5 p.m. and on that date he was working inside the well. DW 4 is Ames Panna. He is a clerk of Luthran High School, Gumla. He has proved that the accused Soma Oraon was present in his school. He proved the School Attendance register (Ext. A). DW 5 Arjun Pandey has proved the signature of the Treasury Officer, Rajkarnal Sahay, on the pension book of Ghura Oraon.

6. Mr. A.K. Chaturvedi, learned counsel appearing on behalf of the appellants strenuously argued that the conviction and sentence of the appellants are not based on any cogent, reliable and admissible evidence. The evidences of the material witnesses are full of vital contradictions. The medical evidence has not supported the ocular evidence. There has been no proper examination of the appellants u/s 313, Cr PC and the circumstances relied upon to hold them guilty were not explained to them and that the conviction and sentence based on the same are wholly unsustainable, unsound and the same are liable to be set aside. Learned counsel submitted that the eye-witness has not named the appellant Nos. 2, 3 and 4. The manner of assault as spelt out in the FIR has not been supported by the PWs and there are several contradictions regarding the manner of assault and injuries on the person of the deceased. PW 1 said that there were two injuries, one on left temple and another on stomach while PW 3 has stated that Tehna had assaulted the deceased only on left temple with Bhujali. In the inquest report only five injuries are mentioned while seven injuries are shown in the postmortem report. According to the learned counsel, there is no evidence of any independent witness in this case. PW 5 and PW 7 were the independent witnesses who have not supported the prosecution case. PW 1 has stated about the injuries on the neck, contrary to the prosecution story. PW 2 is the son of the deceased who is a hearsay witness and he came to know about the incidence at Gumla. PW 3 claimed to be an eye-witness is the friend of Karamdeo, the another son of the deceased. There is admitted land dispute between the parties. According to the learned counsel there is weighty evidence to prove the absence of the appellant Ghura Oraon on the date of the

alleged occurrence. The entry dated 22.4.1987 in the pension book (Ext. C) goes to prove that on that date the appellant No. 2 had drawn his pension from the Bank at Ranchi which is far away from the place of occurrence. The Court below has erroneously rejected his plea of alibi without considering the said evidence on record. The learned counsel urged that in the case of such doubts, the benefit should have been given to the appellants and not to the prosecution. "

7. Mr. R.C.P. Sah, learned counsel appearing on behalf of the informant, on the other hand, submitted that PWs 1, 2 and 3 have supported the prosecution case and their evidences are sufficient to prove the charges against the appellants. The Court below has rightly found the appellants guilty and there is no infirmity in the impugned judgment of the Court below.

8. Mr. M. Patra, learned APP, supported the impugned conviction and sentence of the appellants and submitted that though there are some contradictions in the versions of the prosecution witnesses, yet the medical evidence supports the injuries on the person of the deceased and that there is sufficient material on record to establish the prosecution case and the learned Court below has rightly convicted and sentenced the appellants.

9. Having heard the learned counsel for the parties and scanned and considered the evidence and material on record, we find that there is absence of convincing and strong evidences to substantiate the prosecution case. Virtually there is no eye-witness in this case. PW 1 is said to be present at the place of occurrence. But he stated in paragraph 9 of his deposition that seeing Subhash hurling Bhujali, he fled away and that his other companions had already departed from the place of occurrence. In view of this statement, the version of witnessing the occurrence by PW 1 and PW 3 becomes doubtful, in view of his own contradictory statements, testimony of PW 1 becomes unreliable and untrustworthy, The another alleged eye-witness PW 3 has stated in paragraph 8 of his deposition that Karamdeo and Jitwahan had fled away from the place of occurrence, one eastward and another towards west. This witness had only named Tehna before the police and no other. Apart from the above we find that there is no proper examination of the appellants u/s 313, Cr PC. The circumstances which were relied upon to hold them guilty have not been explained to them and no opportunity has been given to them to explain the same. The questions for recording the statement of the accused-appellants have been superficially framed. It is now well established that the circumstances which were not put to the accused in their examination u/s 313, Cr PC can not be used against them 39 as to rest their conviction. Reference may be made to the decisions of the Supreme Court reported in [Shamu Balu Chaugule Vs. State of Maharashtra](#), [Harijan Magha Jesha Vs. State of Gujarat](#), and 2002 (8) SC 672 Nirmal Pasi and Anr. v. State of Bihar. On close scrutiny of the evidence, we find that the witnesses PW 2 and PW 4 are the sons of the deceased and PW 3 is the friend of PW 4. Two independent witnesses (PW 5 and PW 6) brought forward by the prosecution, have

not supported the prosecution case. PW 5 has been declared hostile and PW 6 has been tendered. In the case of [Sharad Birdhichand Sarda Vs. State of Maharashtra](#), the Apex Court has held that the close relatives of the victim have tendency to exaggerate or add the facts and their evidences must be examined with great care and caution. It has been further held that in view of the close relationship and affection, any person in the position of witness even unconsciously carries psychology of hatred and tendency of revenge against the accused persons. Eight persons were charged for the said offences. Out of them four have been acquitted. Though there is no specific material on record, the appellants have been convicted taking into consideration the thin line of difference of circumstances. The learned Court below has also not properly taken into consideration the defence witnesses and erroneously rejected the plea of alibi of the appellant Ghura Oraon. On review of all the facts, evidences and circumstances, we are constrained to hold that the prosecution could not prove the charges against the appellants beyond all reasonable doubts and in the circumstances of the case the appellants are entitled to get benefit of doubt.

10. In the result, we allow this appeal and set aside the appellants conviction and sentence. Since the appellants are on bail, they are discharged from the liability of their bail-bonds furnished in the Court below.