

(2006) 07 JH CK 0099
Jharkhand High Court
Case No: Criminal Appeal No. 180 of 2000

Subal Mandal

APPELLANT

Vs

The State of Bihar
(Now Jharkhand)

RESPONDENT

Date of Decision: July 19, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 360
- Penal Code, 1860 (IPC) - Section 302, 304, 307, 323, 324

Citation: (2007) CriLJ 678 : (2006) 4 EastCriC 95 : (2006) 3 AIRJharR 779

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: K.P. Deo, Amicus Curiae, for the Appellant; Mr. Manoj Kumar, APP, for the Respondent

Final Decision: Allowed

Judgement

R.R. Prasad, J.

The appellant, Subal Mandal and his wife Sona Devi were tried for charge u/s 302 of the Indian Penal Code on the allegation of committing murder of one Chamu Manda.

2. The trial court did not find the appellant guilty for an offence u/s 302 of the Indian Penal Code, rather found the appellant guilty u/s 304 part II of the Indian Penal Code and accordingly convicted and sentenced him to undergo R.I. for 5 years. On the other hand, Sona Devi was found guilty for an offence u/s 323 of the Indian Penal Code and was given benefit, u/s 360 Cr.P.C.

3. The case of the prosecution is that on 31.7.97 at about 7 A.M. the deceased, Chamu Mandal went to plough his land where his brother (the appellant) and his son, Vikash Mandal (does not seem to have been put on trial) and Sona Devi came and abused him. Thereafter the appellant asked his son, Vikash Mandal to assault

him. Upon it Vikash Mandal gave a sword blow on his head and the appellant, Subal Mandal gave a bhala blow on his head and the accused, Sona Devi assaulted him with danda. Thereafter the deceased, Chamu Mandal submitted a written report (Ext. 2) to Poraiyaha (Dcodanr) Police Station. Upon which the case was instituted under Sections 323, 324, 307/34 of the Indian Penal Code and the injured Chamu Mandal was referred to Sadar Hospital, Godda from where he was referred to Bhagalpur College Hospital where in course of treatment he died on 6.8.1997. On his death the case was also registered u/s 302 of the Indian Penal Code. In course of investigation the I.O. (P.W.9) sent the dead body along with requisites for its postmortem examination. P.W. 10, Dr. Sohan Prasad Choudhary did autopsy on the dead body of the deceased on 7.8.1997 and found the following antimortem injuries on the body:

- (i) Stitched wound 3" on left parietal;
- (ii) Stitched wound 1 1/2" on left frontal;
- (iii) Stitched wound 6" on right paramedian area of abdomen ;
- (iv) Stitched wound 1 1/2" on right arm;
- (v) Bruise 1 1/2" x 1 1/2" four in number on mid of the chest;
- (vi) Bruise 3" x 1" on back of the neck;

Doctor also did notice that there was massive haemorrhage underneath the muscle of neck on back portion.

The Doctor issued the postmortem examination report (Ext.3) with an opinion that the cause of death was shock and hemorrhage and septicemia.

4. After completion of investigation the police submitted chargesheet and accordingly cognizance of the offence was taken against the accused and in due course when the case was committed to the court of Sessions, the charge was framed, to which the appellant pleaded not guilty and claimed to be tried.

5. In this case the prosecution examined 10 witnesses. Out of them P.W.3, Prahlal Mandal, P.W.5, Gobardhan Mandal turned hostile whereas P.W.2, Gopal Mandal, P.W.4, Lakhan Mandal and P.W.6, Laskar Ansari are the hearsay witnesses. Investigating Officer, Rambabu Singh was examined as P.W.9. The court below having found the testimonies of Rustam Ansari (P.W.1), Mostt. Kudu (P.W.7) widow of the deceased and Bishnu Mandal (P.W.8) son of the deceased trustworthy convicted and sentenced them as aforesaid.

Being aggrieved with that order the appellant has preferred this appeal.

6. Mr. K.P.Deo, learned Counsel appearing as amicus curiae submits that the testimonies of the witnesses are not consistent and hence the trial court should not have relied upon the testimonies of P.Ws, 1, 7, 8 and not only that their testimonies

are also not consistent with the written report (Ext.2) submitted by the deceased before the police station and hence order of conviction and sentence is fit to be set aside. Learned Counsel further submits that according to the prosecution case one Vikash Mandal son of the appellant assaulted the deceased with sword but said Vikash Mandal was found to be quite serious having injury on him by the Investigating Officer (P.W.9) who on finding the injuries on the persons to Vishnu Mandal and Chano Mandal (deceased) sent them to hospital, but the prosecution is absolutely silent on the point as to how and in which manner Vikash Mandal sustained injuries and therefore when the prosecution has suppressed, genesis or origin of the occurrence the witnesses cannot be said to be the trustworthy and therefore their testimonies are not worth reliable, but the trial court did not take into consideration this aspect of the matter, which was very vital one and hence order of conviction is fit to be set aside.

7. Having heard counsel for the Parties and on perusal, I do find that the trial court has based his finding on the evidences of Rustam Ansari (P.W.1), widow of the deceased (P.W.7) and Bishnu Mandal son of the deceased (P.W.8), but their testimonies do not appear to be in consistent with each other. P.W.1, in his evidence, has stated that, while the accused were ploughing the field the deceased came to whom Vikash Mandal son of the appellant (not put on trial) abused him and then there ensued altercation and in that course the appellant, Subal Mandal gave a sabal blow on his head and the accused, Sona Devi caught hold of the genital and assaulted with handle of the spade. On the other hand, P.W.7, widow of the deceased, has testified that the appellant, Subal Mandal assaulted on the head of her husband with sabal whereas Vikash Mandal assaulted him with bhala and Sona Devi assaulted with handle of the spade. Further I do find that P.W. 8, Bishnu Mandal has testified that when he heard hullah he found the accused abusing his father Chamu Mandal and when he raised protest then the appellant, Subal Mandal asked his son to assault and then he caught hold of Chamu Mandal and then Subal Mandal gave sabal blow and when he fell down the accused, Sona Devi caught hold of his genital and assaulted with handle of the spade. Thus, there has been no consistency in the testimonies of these witnesses. On one hand P.W.1, has not stated that the Vikash Mandal assaulted Chamu Mandal, but P.W.7 has testified that the Vikash Mandal gave bhala blow. Contrary to it P.W.8 as P.W.8 has not said that Vikash Mandal also assaulted Chamru Mandal. That apart P.Ws. 1,7 and 8 versions of the witnesses, P.W.1, P.W.7 and P.W.8 seem to be quite different from the statement as made in the fardbeyan (Ext,2) by the deceased.

8. From its perusal, it appears that the deceased had made statement that Vikash Mandal gave sword blow on his head whereas Subal Mandal gave a bhala blow on his head and Sona Devi also assaulted. As I have noticed earlier that none of the witnesses has stated that the appellant, Subal Mandal gave bhala blow and Vikash Mandal gave sword blow. Thus the testimonies of the witnesses do not inspire confidence to be believed in the circumstances as has been highlighted above.

Moreover, their testimonies are susceptible to doubt, in view of the fact that the prosecution did not come with a clean version as according to P.W.1 & P.W.8, Vikash Mandal also sustained injury and according to P.W.9, I.O. he noticed serious injuries on the person of Vikash Mandal and therefore he referred him as well as Chamu Mandal (deceased) to hospital.

9. Under the circumstances, the prosecution does not seem to have come with a clean hand and hence it can be said that it has suppressed the genesis and the origin of the occurrence. At this juncture it would be relevant to refer the case of [Lakshmi Singh and Others Vs. State of Bihar](#), where it has been held that in a murder case the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.

10. It may be indicated that Vikash Mandal though not put on trial in this case, he has been alleged by the deceased in his written report and also by P.W.7 to have assaulted the deceased, but the witnesses, did not disclose as to how and in which manner Vikash Mandal sustained injuries.

11. Thus it is evidently clear that the prosecution has not come with a clean hand, rather suppressed the genesis and origin of the occurrence and in that circumstances the testimonies of the witnesses which are not consistent with each other are not at all reliable, hence the appellants deserve to be acquitted. Accordingly, the conviction and sentence passed by the trial court against the appellant, is hereby set aside and is acquitted. In the result, this appeal stands allowed.