

(2007) PLJR 751

Patna High Court

Case No: Criminal Appeal No. 430 of 2002 (DB)

Ram Prakash
Choudhary and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: April 13, 2007

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 149, 302, 323, 447

Citation: (2007) PLJR 751

Hon'ble Judges: Subash Chandra Jha, J; Shiva Kirti Singh, J

Bench: Division Bench

Advocate: Keshav Shrivastava, Alok Anand, Bhubneshar Prasad, Vijay Kr. Shrivastava and Animesh, for the Appellant; Ashwani Kr. Sinha, for the Respondent

Final Decision: Dismissed

Judgement

Subash Chandra Jha, J.

Both the criminal appeals, Cr. Appeal No. 430 of 2002 filed by appellants-convicts Ram Prakash Chaudhary, Yogendra Sah, Bihari Sahni, Jitan Sahni, Surendra Jha, Kailash Jha and Kuna Jha and Cr. Appeal No. 565 of 2002 filed by appellants-convicts Ashok Kumar Chaudhary and Saroj Kumar Chaudhary, have been taken up together for disposal, as the same arise out of the same order of conviction in Sessions Trial No. 282/94/150/02 being held guilty on 10th July, 2002 and, accordingly, sentenced on 12th July, 2002 respectively, arising out of Ujiyarpur P.S. case No. 32/94, by Shri Ajay Kumar Sinha, Additional Sessions Judge, F.T.C. 2, Samastipur. Appellants Ashok Kumar Chaudhary and Saroj Kumar Chaudhary have been held guilty for offence punishable under Sections 447 and 302 I.P.C. whereas remaining appellants of Cr. Appeal No. 430/02 have been held guilty under Sections 447 and 302/149 I.P.C. Appellants Ashok Kumar Chaudhary and Saroj Kumar Chaudhary have been sentenced to undergo rigorous imprisonment for one month for offence u/s 447 I.P.C. and to undergo life imprisonment for being held guilty u/s 302 I.P.C. Both the sentences to run concurrently.

2. Similarly, appellants Ram Prakash Chaudhary, Yogendra Sah, Bihari Sahni, Jitan Sahni, Surendra Jha, Kailash Jha and Kuna Jha have been sentenced to serve rigorous imprisonment for one month for being held guilty u/s 447 I.P.C. and to undergo life imprisonment for offence under Sections 302/149 I.P.C.

3. The case of the prosecution, as stated in the Fardbeyan (Ext. 2) of Radha Kant Chaudhary (P.W. 7) recorded by S.I. of Police Sri N.N. Thakur on 24.3.94 at 13 hours in Sadar Hospital, Samastipur, emergency ward, in short, is that on 23.3.94 at 7 P.M. while son of the informant, namely, Manoj Kumar Chaudhary was at his darwaja, all accused persons named in the F.I.R. (all the appellants-convicts) arrived there armed with lathi and iron rods. As per allegation convict Ram Prakash Chaudhary ordered to kill the deceased at which appellants-convicts Ashok Kumar Chaudhary and Saroj Kumar Chaudhary assaulted Manoj Kumar Chaudhary on his head by means of iron rod due to which Manoj Kumar Chaudhary fell down unconscious and thereafter other appellants assaulted him by means of lathi as a result of which bleeding from his nose and mouth started and then convicts-appellants managed their escape.

4. It has further been alleged that appellants have left the place on being satisfied that victim Manoj Kumar Chaudhary died. The informant was also chased when he went there in rescue of his son. Villagers, namely, Chandradeo Chaudhary (P.W. 5), Ram Naresh Chaudhary (P.W. 6), Ram Gulam Sharma (not examined), Rama Kant Chaudhary (not examined), Bhola Rai (not examined) and others arrived there.

5. The victim Manoj Kumar Chaudhary was brought in the clinic of a private doctor, (not examined) where his condition deteriorated and on his reference he was brought to Samastipur in the clinic of Dr. R.P. Mishra wherefrom he was referred to Sadar Hospital, Samastipur in the emergency ward and ultimately the victim succumbed to his injuries and, as such, fardbeyan of the informant was recorded there, on the basis of which formal F.I.R. (Ext. 1) was drawn.

6. Investigation commenced and ultimately on conclusion, the charge sheet was submitted. Cognizance was, accordingly, taken for the offence u/s 302 and other allied Sections of the Indian Penal Code and, as such, case was committed to the court of sessions and ultimately it was received in the trial court, wherefrom judgment and order under challenge has been delivered.

7. Learned counsel for the appellants has submitted that the occurrence as stated never took place rather convicts have been held guilty in the impugned judgment by the learned trial court without appreciation of facts and circumstances and evidence in right perspective. According to their defence, it is the appellant, namely, Saroj Kumar Chaudhary, who was brutally assaulted and, as such, Ujiyarpur P.S. case No. 31/94 was instituted against three accused persons including deceased Manoj Kumar Chaudhary in which it has been stated that while the appellant Saroj Kumar Chaudhary was returning from his home, all the accused persons, named therein, reached near Bhagwat Asthan

brutally assaulted appellant Saroj Kumar Chaudhary by lathi and broken his right knee causing grievous injury with this specific allegation that accused Manglu Chaudhary hurled lathi blow on the appellant but it hit the deceased Manoj Kumar Chaudhary to which he fell down.

8. It has also been submitted that so far appellants of Cr. Appeal No. 430/02, i.e., Ram Prakash Chaudhary, Yogendra Sah, Bihari Sahni, Jitan Sahni, Surendra Jha, Kailash Jha and Kuna Jha are concerned, they have been falsely implicated and there cannot be any motive attributed to them for causing the death of Manoj Kumar Chaudhary. Further submission in defence is that in the post mortem report the doctor after holding autopsy did not find any mark of injury on the person of the deceased and, as such, the impugned judgment whereby they have been held guilty, convicted and sentenced to serve aforesaid period in confinement should be not sustainable on facts, circumstances and probabilities of the case. It has also been submitted that the injury sustained by appellant Saroj Kumar Chaudhary for which police case was lodged, as stated above, has not been explained by the prosecution side and on that score the case of the prosecution has no leg to stand.

9. In course of trial altogether 7 witnesses for the prosecution have been examined. Out of them P.W. 1 Tej Narayan Kumar, P.W. 2 Sita Ram Mahto and P.W. 3 Dhruv Narayan Lal are formal witnesses. They have proved formal F.I.R. (Ext. 1), Fardbeyan (Ext. 2) and signature of Sri N.N. Thakur (Ext. 3) respectively.

10. P.W. 4 is Dr. Baikunth Bihari Jha who performed post mortem examination on the body of Manoj Kumar Chaudhary on 24.3.94 at 4.30 P.M. while being posted as Civil Assistant Surgeon at Sadar Hospital, Samastipur. The dead body was brought and identified by a police constable Teju Khan and others. Identity of the dead body has not been challenged. On examination of the dead body he found the following ante mortem injuries on the deceased :

"There was boggy Swelling over whole of the scalp. On a deep dissection of the swelling over scalp, blood and blood clots were found present. One fracture of the right parietal bone was found present. On further dissection blood and blood clots inside the cranial cavity was present, with laceration of right cerebral hemisphere."

He opined that hard and blunt substance, such as, lathi, iron rod, were used for infliction of injuries ultimately causing death of the deceased, which was sufficient in ordinary course to cause death. Cause of death was due to shock and hemorrhage as a result of above mentioned ante mortem injuries (Ext. 4). From trend of cross examination and appraisal of the same, it is apparent that lacerated wounds on head were inflicted. Doctor found fracture of parietal bone on the right side. He could not show as to whether he has found any fracture on other parts of the body. He did not find any other part of scalp bone fractured. But has opined that the injuries may be by more than one blow.

11. P.W. 5 is Chandradeo Chaudhary, who has stated that at the relevant time at about 7.00 A.M. in the morning he was sitting at his darwaja alongwith Ram Naresh Chaudhary (P.W. 6) where he heard hulla of Manoj Kumar Chaudhary and rushed there to see all the appellants He further says that Ashok Kumar Chaudhary and Saroj Kumar Chaudhary were armed with iron rods, whereas other remaining appellants were armed with lathi. At the instance of Ram Prakash Chaudhary, Ashok Kumar Chaudhary and Saroj Kumar Chaudhary hit on the head of Manoj Kumar Chaudhary with iron rod and, as such, Manoj Kumar Chaudhary fell down there. Other appellant-accused also assaulted him with lathi after Manoj fell down and, as such, blood oozed out from his nose and mouth and thereafter appellants managed their escape. He also names villagers, who arrived at the place of occurrence and saw the occurrence. He has proved signature on the fardbeyan (Ext. 5). He happens to be full brother of the informant Radh Kant Chaudhary. He admits his relationship with accused appellant Ram Prakash Chaudhary. He also admits land dispute with accused persons and pendency of civil suit in the court of Sub-Judge, Sitamarhi as also some proceeding before the Executive Magistrate.

12. P.W. 7 Radha Kant Chaudhary is the informant of this case, who has more or less stated on the line of P.W. 5 Chandradeo Chaudhary. This witness happens to be father of the deceased. Infliction of injury on the head of the deceased Manoj Kumar Chaudhary by means of iron rod by appellants Ashok Kumar Chaudhary and Saroj Kumar Chaudhary at the flour mill of the deceased Manoj Kumar Chaudhary remains uncontroverted. He is also very much firm and that too remains unimpeached so far arrival of other convicts, namely, Ram Prakash Choudhary, Yogendra San, Bihari Sahni, Jitan Sahni, Surendra Jha, Kailash Jha and Kuna Jha armed with lathi and empty handed is concerned. More or less same evidence has come from the mouth of P.W. 6 Ram Naresh Chaudhary.

13. On consideration of aforesaid facts, circumstances as also evidence, it has emerged that all the convicts variously armed had arrived at the darwaja of Manoj Kumar Chaudhary and due to previous grudge and enmity, convict Ashok Kumar Chaudhary and Saroj Kumar Chaudhary had inflicted injuries on the head of the deceased Manoj Kumar Chaudhary by means of iron rod and, as such, inspite his being given first aid and primary stitches by village doctor and treated by Dr. R.P. Mishra at Samastipur, it ultimately ended in his tragic end in the emergency ward of Sadar hospital, Samastipur, where fardbeyan of informant was recorded.

14. On due consideration of facts, circumstances and evidence, it remained unrebutted so far participation of appellants Ashok Kumar Chaudhary and Saroj Kumar Chaudhary in causing death of the deceased Manoj Kumar Chaudhary due to previous grudge and enmity at the darwaja of Manoj Kumar Chaudhary is concerned and for that, the conviction and thereby imposition of sentence awarded to both of them by trial court does not warrant any interference.

15. So far remaining appellants of Cr. Appeal No. 430 of 2002, namely, Ram Prakash Choudhary, Yogendra San, Bihari Sahni, Jitan Sahni, Surendra Jha, Kailash Jha and

Kuna Jha are concerned, argument has been advanced that their motive premeditative design is not manifest from their acts although evidence has been led in respect of their arrival at the place of occurrence and thereby assaulting the deceased after he fell down on the earth due to infliction of iron rod causing head injuries by Ashok Kumar Chaudhary and Saroj Kumar Chaudhary. Medical evidence has also been referred so as to show that save and except sustaining of injuries on the head, the injured was not found of receiving any injury on other part of the body by means of lathi.

16. Having considered aforesaid facts and circumstances it could be stated that there is absence of any lathi injury on the person of the deceased. In the given situation if one is attacked and give several blows of lathi after he fell down on the earth by seven persons, it is but natural that visible mark of injuries inflicted with lathi could have been detected while holding post mortem examination of the deceased by the doctor but so is not the case here.

17. In the facts and circumstances, although their presence at the place of occurrence remains unrebutted, but due to absence of sustaining any lathi injury on the person of the deceased, it would not be proper to hold that they were also responsible for causing death of the deceased and for that they could be held guilty, on due consideration of evidence, circumstances and probabilities of the case, only for offence punishable under Sections 147, 323/149 I.P.O.

18. It would not be out of place to mention that defence has examined a formal witness and produced certain documents so as to show that parties were on inimical terms from before and for that F.I.R. has also been drawn against the deceased.

19. In that context, learned A.P.P. has replied that enmity cuts both the ways, otherwise there was no occasion for the close agents of the deceased to have come armed with lathi at the darwaja of the deceased and assaulted him, ultimately causing death of the deceased. So, each case has its own merit to be decided on facts and circumstances individually and for that, the whole prosecution story cannot be disbelieved. It has also been submitted that in the given situation, it could be stated that informant remained busy in connection with treatment of his injured son, who ultimately succumbed to the injuries and therefore his case was numbered as Ujiyarpur P.S. case No. 32/94 whereas the appellant Saroj Kumar Chaudhary had availed the opportunity in lodging case earlier at the same police station numbered as Ujiyarpur P.S. case No. 31/94. But there is no injury report to support his case.

20. In the facts and circumstances and on due consideration, the order of conviction and thereby imposition of sentence, requires modification and for that the imposition of sentence in respect of Sections 147, 302/149 is altered to Sections 447 & 323/149 I.P.C. and thus reduced to the period already undergone by these seven appellants of Cr. Appeal No. 430 of 2002, namely, Ram Prakash Choudhary, Yogendra Sah, Bihari Sahni, Jitan Sahni, Surendra Jha, Kailash Jha and Kuna Jha in custody which will meet the ends

of justice. They shall stand discharged from the liability of their bail bonds.

21. On due consideration of aforesaid facts and circumstances and material on record, the order of conviction and sentence in respect of appellants Ashok Kumar Chaudhary and Saroj Kumar Chaudhary stands confirmed. Their appeal shall stand dismissed. The order of conviction and imposition of sentence in respect of aforesaid seven appellants of Cr. Appeal No. 430 of 2002 stands modified to that extent, as stated above. Their appeal shall also stand dismissed but with such modification.

Shiva Kirti Singh, J.

22. I agree.