

Doman Sao and Ors Vs. State of Bihar

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Court : Jharkhand

Decided On : Mar-02-2017

Appellant : Doman Sao and Ors

Respondent : State of Bihar

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Appeal (D.B.) No. 208 of 1991 (R) 1. Doman Sao 2. Bhuneshwar Sao 3. Gopal Rana 4. Bandhan Thakur Appellants Versus The State of Bihar (Now Jharkhand) Respondent -----
CORAM : HONBLE MR. JUSTICE H. C. MISHRA HONBLE MR. JUSTICE Dr. S.N.PATHAK For the Appellants : M/s. Abhay Shankar Dayal, Advocate Supriya Dayal, Advocate For the State : M/s. Ravi Prakash, A.P.P. ----- C.A.V. on 31.01.2017 Pronounced on 02.03.2017 H.C. Mishra, J.

:- Heard learned counsel for the appellants and the learned counsel for the State.

2. The appellants are aggrieved by the Judgement of conviction dated 10.09.1991 and order of sentence dated 12.09.1991 passed by the learned 3rd Additional Sessions Judge, Hazaribag, in S.T. No. 62 of 1984, whereby the appellants have been found guilty for the offence under section 302 read with section 34 of the Indian Penal Code and they have been convicted for the same. Upon hearing on the point of sentence the appellants have been sentenced to undergo rigorous imprisonment for life.

3. According to the prosecution case, the F.I.R. was lodged on the basis of the fardbeyan of the deceased himself, while he was alive. The fardbeyan of the deceased Kanhai Sao was recorded at Simaria State Dispensary on 01.07.1982 at 10:30 hours, by the A.S.I. of the Simaria Police Station, wherein the informant deceased alleged that on 01.07.1982 at about 9:00 A.M. he was going along with his younger brother-in-law on a cycle and when he reached near the house of the accused Doman Sao, he met Doman Sao and asked for his Rs.250/- which was due with Doman Sao, whereupon Doman Sao became angry and the accused persons, namely, Doman Sao, Bhuneshwar Sao, Gopal Mistry and Bandhan Thakur, forcibly carried him to the house of Doman Sao. The informant raised alarm but no one came to his rescue, and in the house, upon the order of Doman Sao, the other accused 2 persons forcibly pressed him to the floor and Doman Sao assaulted him by sword causing cut injuries on his left leg and both hands. The informant became unconscious and when he gained consciousness, he saw that his mother, sister and brother-in-law had come there and they took him out of the house. They also informed him that after assaulting him the accused persons had locked him in the room which was opened by the mother. Thereafter, he was brought to Simaria hospital. In the fardbeyan the deceased informant had stated that the accused had assaulted him with the intention to cause his death. As the deceased informant was not in a position to put his signature on the fardbeyan, he put his thumb impression on the fardbeyan. On the basis of the fardbeyan, Simaria P.S. Case No. 31 of 1982 corresponding to G.R. No.339 of 1982 was instituted against the appellants for the offence under sections 341, 342, 326, 307 / 34 of the Indian Penal Code and investigation was taken up.

4. It may be stated that at Simaria State Dispensary, looking into the serious condition of the informant, he was referred to other hospital, and the deceased was brought to Hazaribag hospital, where he died on the same day. In the same night the deceased informant was married and in the morning the occurrence had taken place. Upon the death of the deceased, section 302 of the Indian Penal Code was also added, and after investigation the police submitted the charge-sheet against the accused appellants.

5. Upon commitment of the case to the Court of Session, the charge was framed against the accused persons for the offence under sections 302 / 34 of the Indian Penal Code and upon the accused persons' pleading not guilty and claiming to be tried, they were put to trial. In course of trial the prosecution has examined 10 witnesses and has also proved the necessary documents. The defence has also examined two witnesses in the case.

6. P.W.-2, Lakhia Devi is the mother of the deceased informant, whom the deceased had first seen after gaining consciousness in the room, where he was assaulted. This witness has supported the prosecution case and has stated that on the day of occurrence at about 9:00 A.M., she was at her grocery shop when the brother-in-law of the deceased, namely, Nagendra came on the shop and informed that all the four accused persons had taken Kanhai Sao (the deceased) to the house of Doman Sao and they were assaulting him. Upon getting the 3 information she ran towards the house of Doman Sao and she also took a tangi with her. She found that the house of Doman Sao was locked from outside whereupon she broke the lock with the help of tangi and entered the room. She found her son lying in the pool of blood and he informed her that Doman Sao, Bhuneshwar Sao, Gopal Rana and Bandhan Nauwa had brought him there from near the blackberry tree and assaulted him by sword. This witness has stated that her husband and her daughter also came there. Her son was brought to Simaria and subsequently he died. She has identified all the four accused persons in the Court and has also stated that she had seen them fleeing away. This witness was put to cross-examination by the defence, but nothing of much importance could be taken in her cross-examination and she has stood the test of cross-examination.

7. P.W.-1, Thakur Mani Saw, is the father of the deceased, who along with other persons had taken the deceased to hospital. He has stated that on the day of occurrence at about 8:30 A.M. he was at the tea shop of one Saroj Singh and he was taking tea. Saroj Singh and Lakhan Singh were also present at the tea shop, which is situated at the distance of about 200 yards from his house and can also be seen from his house. His daughter Binodwa Kumari, aged about 11 years at that time, came there and informed that the accused persons Doman, Bhuneshwar, Gopal and Bandhan, had carried her brother to the house of Doman

Sao assaulting him. Upon getting the information this witness rushed to the house of Doman Sao and two to three persons also followed him. Upon reaching near the house he saw all the four accused persons fleeing away through the sugarcane field. He entered the house of Doman Sao and saw his son, who informed him that he was going on cycle along with his brother-in-law and near the house he met the accused persons and demanded his due money, whereupon all the accused persons took him into the house and Doman Sao had assaulted him by sword cutting his leg and hands in presence of the other accused persons. This witness has stated that his son was running a small shop and the dues were with respect to the purchases from the said shop. He has also stated that his wife, the brother-in-law of his son and his daughter-in-law were also there. This witness has stated that about two hours prior to the occurrence his son was married. He has stated that there was a blood stained sword also nearby. This witness brought his son to Simaria Hospital on a truck where his son also gave his fardbeyan 4 to the Sub-Inspector of the Simaria Police Station. The Doctor told that the injuries were serious and the treatment was not possible there and asked him to take his son either to Hazaribag or Ranchi. His son was brought to Hazaribag hospital and on the same day at about 5:00 P.M. he died. This witness has also identified all the four accused persons in the Court. This witness was put to extensive cross-examination by the defence, and in his cross-examination he has stated that he was asked by the Doctor to call the police and when the fardbeyan of the informant was recorded in the presence of the Doctor. He has denied the suggestion that his son had not given any fardbeyan as he had already died. He has also stated that his son wanted to put his signature on the fardbeyan, but due to the injuries in his hand he could not put his signature and he had put his thumb impression. He has denied the suggestion that the thumb impression was a forged one. He has stated that his statement was taken by the police during investigation and the statements of other witnesses were also taken. This witness has also stated that the marriage of his son had taken place in the previous night and the son-in-law of the deceased was aged about 8 to 9 years at that time. This was the second marriage of his son. This witness has also admitted that there were previous cases between Doman Sao and this witness. Doman Sao had also filed a case upon him and this witness had also filed a case of dacoity against Doman

Sao. This witness was also in jail for about one week. In his cross-examination though he has admitted previous enmity with Doman Sao, but he stated that he had no enmity with the other accused persons, but all the four accused are friends. He has denied the suggestion to have given false evidence.

8. P.W.-4, is Yashoda Devi, who is the sister of the deceased. She has stated that on the day of occurrence she was at the well by the side of the road, washing clothes. She saw the accused Bandhan, Gopal, Bhuneshwar and Doman carrying away her brother from near the blackberry tree to the house of Doman Sao which was situated in front of the blackberry tree. This witness also followed them whereupon Bhuneshwar and the wife of Doman caught hold her. She has stated that Doman assaulted her brother and the other witnesses had held him. Her brother was assaulted inside the house of Doman Sao and she had also entered the house. After assaulting her brother the accused persons fled away through the sugarcane field. She was also locked in the room by the accused persons which was opened by her mother. This witness had 5 identified the accused persons in the Court. This witness was also cross- examined by the prosecution and her attention has been drawn towards her statements made before the police, whereupon she has asserted that she had made these statements before the police as stated in her examination-in-chief. The impugned Judgement shows that the I.O., who had recorded her statement, was not examined, but the Trial Court had perused the case diary from which it appeared that there was no contradiction in her statement given before the police. Accordingly, there appears to be nothing to discredit her evidence, except for the fact that the mother of the deceased has not stated that when she opened the door this witness was also present in the room, and that this witness has named the wife of Doman Sao also, but her presence has not been stated by any witness. This witness has supported the prosecution case as the eye witness to the occurrence.

9. P.W.-8, Binod Kumari, is the other sister of the informant who at the time of her evidence was aged about 15 years. This witness has stated that on the day of occurrence she was picking blackberry under the blackberry tree when her brother Kanhai was coming along with Nagendra. When he reached near the blackberry tree the accused persons Doman, Bandhan, Bhuneshwar and Gopal carried her

brother to the house of Doman Sao. She informed her father at the shop of Saroj, and she came back along with her father, when she saw all the four accused persons fleeing away through sugarcane field. Her brother informed that all the four accused had assaulted him by sword. This witness has also identified the accused persons in the Court. She was also put to extensive cross-examination, but she has stood the test of cross-examination.

10. P.W.-3, is Kailash Devi, who is yet another sister of the deceased. She has only stated that she had seen Doman, Bandhan, Bhuneshwar and Gopal near the blackberry tree and his brother was going on a cycle along with his brother-in-law. Thereafter, she came to the house. She also went to the place of occurrence along with her mother and saw her brother in a badly injured condition. This witness has not stated anything about any information given by her brother about the occurrence and she has stated in her cross-examination that her brother was unconscious.

11. P.W.-5 is Juwel Herenz Munda, who has only come to depose that the mother of the deceased had come to him and stated that 6 someone had killed her son. He has also stated that he had seen blood near the blackberry tree. P.W.-6, Saroj Singh is the witness at whose shop the father of the informant was taking tea when he was informed about the occurrence. He has stated that the father of the informant was on his shop and his daughter came and informed that someone was shouting in the house of Doman Sao. This witness has stated that after an hour he went to the house of Doman Sao and saw Kanhai Sao in injured condition and he was unconscious. He was brought to Simaria Hospital where he died. He has stated that the daughter of Thakur Mani Saw had not informed about any accused nor this witness had seen any accused fleeing away. This witness was declared hostile.

12. P.W.-9, is Dr. M.M. Sen Gupta, who had examined the deceased at Simaria Health Centre at about 9:29 A.M. on the day of occurrence. He has proved five injuries caused by sharp cutting weapon and were grievous in nature. He has proved the injury report to be in his pen and signature, which was marked Exhibit-2. In his entire evidence he has not stated that the deceased while being

examined by him was in unconscious state.

13. P.W.-7 is Dr. Ved Vrat, who had conducted the post-mortem examination on the dead body of the deceased and had found the following ante-mortem injuries on the deceased:- i) Incised wound 2 x 1/2 x cutting the tibia bone partially of the left leg. ii) Incised wound 2 x 1/2 over right knee joint cutting the patella bone partially. iii) Incised wound 4 x 1/2 over left fore-arm butting Ulna bone through and through. iv) Incised wound 3 x 1/2 x cutting the underlying muscles over right upper arm. v) Incised wound 7 x 1/2 over back of right elbow joint cutting the upper part of Ulna. vi) Fracture of left thigh bone. This witness has stated that on dissection he found all the internal organs were intact and pale. Both the chambers of the heart were empty. He has stated that death was due to excessive bleeding leading to shock caused by the above noted injuries. The time elapsed since death between 12 to 24 hours. This witness has identified the post-mortem report to be in his pen and signature, which was marked Exhibit-1. He 7 has also stated that injury No. (i) to (vi) may be caused by same sharp cutting weapon, such as sword. There is nothing important in his cross-examination.

14. P.W.-10 is the I.O. of the case. He has identified the fardbeyan and the formal F.I.R. to be in the writing and signature of the A.S.I. Ram Naresh Singh and the same were marked Exhibits-3 and 4 respectively. This witness has also identified the inquest report of the dead body and the same was marked Exhibit-5 and this witness has stated about the investigations made by him and has stated that after getting the post-mortem report, he submitted the charge-sheet. In his cross-examination this witness has stated that accused Doman Sao permanently lived at Kadma and only for the purpose of agriculture he used to come to the village. He had visited the house of Doman Sao at the village, but no one was there. Some contradictions in the statements of the witnesses have been taken from him which are not of much importance.

15. The witnesses examined by the defence are D.W.-1 Kedar Ram, who was a dresser in Simaria Hospital and D.W.-2 Nageshwar Thakur, who had also visited the Simaria Hospital in connection with treatment. These witnesses had stated that when the deceased was brought to Simaria Hospital he was unconscious and not

in a position to give statement. They have also stated that only his thumb impression was taken by the police on a blank paper.

16. Learned counsel for the appellants has submitted that the impugned Judgement of conviction and Order of sentence are absolutely illegal and cannot be sustained in the eyes of law. It is submitted that the accused persons have been falsely implicated in this case due to previous enmity which is admitted by P.W.-1 Thakur Mani Saw, who is the father of the deceased and has admitted that there are criminal cases between him and Doman Sao. It is further submitted that P.W.-4 Yashoda Devi is actually not the eye witness to the occurrence, but she has tried to become an eye witness. In her evidence she has stated about the presence of the wife of Doman Sao also, stating that she was caught held by her. It is stated that none of the witnesses have stated about the presence of the wife of Doman Sao and after the occurrence, no one was found in the house. Learned counsel accordingly, submitted that though P.W.-4 has tried to become an eye witness to the occurrence, but actually she is not the eye witness to the occurrence. 8 Learned counsel also submitted that though the other witnesses, namely, P.W.-1 Thakur Mani Saw, father of the deceased, P.W.-2 Lakhia Devi, the mother of the deceased, P.W.-8 Binod Kumari, the sister of the deceased have stated that they were informed about the manner of occurrence by the deceased, but the fact remains that P.W.-6 Saroj Singh has stated that when he went to the place of occurrence, he saw the deceased unconscious. The other two defence witnesses have also stated that the deceased was brought to the hospital in an unconscious state and he had not given any statement before the police. It is further submitted by learned counsel that the fardbeyan of the deceased cannot be treated as a dying declaration of the deceased, as even though P.W.-1, Thakur Mani Saw has stated that the fardbeyan was recorded in presence of the Doctor, but no such statement has been made by P.W.-9, Dr. M.M. Sen Gupta, who had examined the deceased, nor his signature was obtained on the fardbeyan. Learned counsel also submitted that the brother-in-law of the deceased who admittedly was present with the deceased at the time of occurrence, had not been examined in the case and the case has been supported only by the interested witnesses. Learned counsel accordingly, submitted that due to enmity the accused persons have been falsely implicated in this case.

17. Learned counsel for the defence has placed reliance upon the decision of the Supreme Court of India in Panchdeo Singh Vs. State of Bihar, reported in (2002) 1 SCC577 as also on a decision of Jharkhand High Court in Suresh Singh & Anr. Vs. State of Bihar (Now Jharkhand), reported in 2003 (3) East Cr. C487Jhrl), wherein it is held that if the dying declaration is doubtful and was not recorded while the deceased was in a fit state of mind and capable of making statements, the same cannot be relied upon. Learned counsel has also submitted that the Police Officer who had recorded the fardbeyan has not been examined in this case and on this ground also, the dying declaration cannot be relied upon. In this connection learned counsel has placed reliance upon the decision of Supreme Court of India in Govind Narain and Anr. Vs. State of Rajasthan, reported in 1993 SCC (Cri) 1012, wherein it is held that if the scribe of the dying declaration is not examined, the defence had no opportunity to cross-examine him and accordingly, the same cannot be relied upon. Learned counsel has accordingly, submitted that the prosecution has not been able to prove the case beyond all reasonable doubts and it is a fit case in which the appellants ought to have been given at least the benefit of doubt.

18. Learned counsel for the State on the other hand has opposed the prayer and has submitted that the prosecution has been able to prove its case beyond all reasonable doubts. It is submitted that this case is not solely dependent upon the fardbeyan of the deceased which is also his dying declaration, rather the dying declaration of the deceased is fully corroborated by the ocular evidence of P.W.-1 Thakur Mani Saw, the father of the deceased, P.W.-2 Lakhia Devi, the mother of the deceased, P.W.-4 Yashoda Devi, the sister of the deceased, who is also the eye witness to the occurrence and P.W.-8 Binod Kumari, the sister of the deceased. The evidence of these witnesses as also the dying declaration of the deceased are again fully corroborated by the evidence of P.W.-9 Dr. M.M. Sen Gupta, who had examined the deceased at Simaria Hospital and P.W.-7, Dr. Ved Vrat, who had conducted the post-mortem examination and had found the ante-mortem injuries caused by sharp cutting weapon such as sword, on the sites, as described by the deceased. Learned counsel further submitted that though the defence witnesses and the hostile witness has stated that the deceased was unconscious, but the fact remains that no such statement has been made by P.W.-

9, Dr. M.M. Sen Gupta, who had examined the deceased. Had the deceased been unconscious at that time, that would have been the first thing to be recorded in the injury report. Learned counsel accordingly, submitted that the prosecution has been able to bring home the charge against the accused beyond all reasonable doubts.

19. Having heard learned counsels for both the sides and upon going through the record, we find that the prosecution case is fully supported by P.W.-4 Yashoda Devi, the sister of the deceased, as an eye witness. Though it appears that she has tried to implicate the wife of the appellant Doman Sao also, about whom there is no other evidence on record, but the fact remains that this witness has stood the cross-examination well and nothing could be taken in her cross- examination to discredit her evidence in entirety, particularly in light of the evidence of P.W.-8, Binod Kumari, who has also stated that all the four accused had carried the deceased to the house of Doman Sao and she is also an eye witness to that extent. The fact remains that in the impugned Judgement it finds mentioned that similar statement was given 10 by this witness before the police also. As such, simply because of the fact that this witness had tried to implicate the wife of the appellant Doman Sao also, her evidence about the occurrence as an eye witness cannot be fully discarded. It is only required to be examined with due care and caution, and if it finds corroboration by the other evidence, it can be relied upon to the extent it gets corroborated by the evidence of other witnesses. In the present case the F.I.R. of the deceased has to be taken as his dying declaration, though it is the fact that the signature of the Doctor before whom the said dying declaration was recorded is not there in the fardbeyan, nor the scribe of the fardbeyan has been examined in the case, but the fact remains that this dying declaration is not the only piece of evidence on which the prosecution case stands. The statement made about the manner of occurrence in the fardbeyan, i.e., the dying declaration of the deceased, is fully corroborated with the evidence of the eye witness P.W.-4, Yashoda Devi. Again P.W.-8 Binod Kumari has stated that she had seen all the four accused appellants carrying her deceased brother towards the house of Doman Sao. The fact remains that the deceased was found by P.W.-1 Thakur Mani Saw in the house of Doman Sao, and the deceased narrated the occurrence before his father P.W.-1 also, as also before P.W.-2 Lakhia Devi who had also

reached the place of occurrence and had broken the locked door, and had found the deceased in the injured condition in the room. The ocular evidence of these witnesses fully corroborate the dying declaration of the deceased, and all these are also fully corroborated by the medical evidence of P.W.-9, Dr. M.M. Sen Gupta, who had examined the injuries on the deceased at hospital and he has not stated that the deceased was in an unconscious state. Had he found the deceased in unconscious state, this fact would have been stated first in the injury report. The injuries on the deceased are also fully corroborated by the medical evidence of P.W.-7 Dr. Ved Vrat, who had conducted the post-mortem examination, and has found the incised wounds at the sites described by the deceased in his dying declaration, as also before the witnesses. The non-examination of the brother-in-law of the deceased with whom the deceased was going on the day of occurrence, is not of much importance in the present case, particularly in view of the evidence that the deceased was married in the previous night only, and in the morning the deceased was murdered. It is quite natural that by lapse of time this witnesses had lost interest in the case in view of 11 the fact that the relationship between the deceased and his family had not continued even for few hours. We thus, find that the prosecution has been able to bring home charge against the accused persons beyond all reasonable doubts and on the basis of the evidence on record the appellants have been rightly convicted and sentenced for the offence under sections 302 / 34 of the Indian Penal Code.

20. In view of the aforementioned discussions we do not find any illegality in the impugned Judgement of conviction dated 10.09.1991 and the Order of sentence dated 12.09.1991 passed by the learned 3rd Additional Sessions Judge, Hazaribag, in S.T. No. 62 of 1984, and the same, are hereby, affirmed. Consequently, the bail bonds of the appellants, are hereby, cancelled, and the appellants are directed to surrender in the Court below for serving out the sentence. The Court below is also directed to issue process compelling the production / surrender of the appellants for serving out the sentence.

21. There is no merit in this appeal and the same is accordingly, dismissed, with the directions as above. Let the Lower Court Records be sent back forthwith along with the copy of this Judgement. (H.C. Mishra, J.) Dr. S.N. Pathak, J.

(Dr. S.N. Pathak, J.) Jharkhand High Court, Ranchi. Dated the 2nd of March, 2017. D.S./N.A.F.R.

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