

Patrik Bara Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jul-27-2017

Appellant : Patrik Bara

Respondent : State of Jharkhand

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI CRIMINAL APPEAL (D.B.) No. 1797 of 2004 ----- [Arising out of the Judgment of conviction dated 30 th August 2004 and Order of sentence dated 31st August, 2004, passed by learned Additional Sessions Judge, F.T. C. I, Gumla, in Sessions Trial No.106 of 2004] ----- Patrik Bara Appellant -versus- State of Jharkhand Respondent ---- PRESENT :HON'BLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE ANANDA SEN ---- For the Appellant : Mr. D.C. Mishra, Amicus Curiae For the Respondent : Mr. Azeemuddin, A.P.P. ----- By Court.:- Heard Mr. D.C. Mishra, learned amicus curiae appointed by this Court for the appellant, and the learned counsel for the State.

2. This is a Jail Appeal filed by the appellant, being aggrieved by the Judgment of conviction dated 30th August, 2004 and Order of sentence dated 31st August, 2004, passed by the learned Additional Sessions Judge, F.T.C.-I, Gumla, in Session Trial No.106 of 2004, whereby the sole appellant has been found guilty and convicted for the offences under Sections 302 and 324 of the Indian Penal Code. Upon hearing on the point of sentence, the appellant has been sentenced to undergo rigorous imprisonment for life for the offence under Section 302 of the

Indian Penal Code and rigorous imprisonment for 3 years for offence under Section 324 of the Indian Penal Code. The appellant has also been sentenced to fine of Rs.10,000/-. All the sentences were directed to run concurrently.

3. This case relates to murder of a girl child aged about 2 years, and the prosecution case was instituted on the basis of the fardbeyan of Michel Ekka, the father of the deceased girl, recorded on 31.12.2003 at his 2 village Konkel, P.S. Chainpur, District Gumla. The informant had stated that he had gone for some urgent work to Premnagar in the morning and when he was returning, at about 11.00 A.M., he saw that his mother, Balmadina Ekka, was being taken to the hospital by the villagers as she was injured. Upon enquiry, he was informed that accused Patrik Bara had assaulted his daughter Reema Ekka, aged about 2 years, by axe, causing injuries and when his mother had gone to save her, she was also assaulted on her head by axe. His daughter had died at the spot and the mother was being taken by the villagers to Chainpur Hospital. He has stated that Patrik Bara was apprehended by the villagers with the axe used in the offence, which was produced before the police. He has stated that he had no enmity with Patrik Bara. On the basis of the fardbeyan of Michel Ekka, Chainpur P.S. Case No.62 of 2003 corresponding to G.R. No.828 of 2003 was instituted for the offence under Sections 302, 307, 327, 324 of the Indian Penal Code, and the investigation was taken up. After investigation, the police submitted the charge-sheet against the accused.

4. After commitment of the case to the Court of Session, charge was framed against the accused for the offences under Sections 302, 307 and 326 of the Indian Penal Code, and upon the accused's pleading not guilty and claiming to be tried, he was put to trial. In course of trial, 11 witnesses were examined on behalf of the prosecution.

5. P.W.-7 Balmadina Ekka is the mother of the informant, who was also injured in occurrence. This witness has stated that the occurrence had taken place on a Wednesday at about 10-11 A.M. She was near the house of a milkman and one another old lady was also there with her, whose name she was not recollecting. Children were playing nearby, and Reema was also playing there. In the

meantime, Patrik came armed with an axe and pushed 3 Reema, whereupon she fell down and he assaulted her by axe on her head. This witness started crying, whereupon Patrik also assaulted her on her head. She has stated that she was brought for treatment to Chainpur and from there she was taken to Ranchi for her treatment. She had no recollection as to how she was brought to Ranchi, as she was unconscious, but she has stated that Reema had died at the spot. She has identified the accused in the Court. In her cross-examination, she has stated that her statement was not recorded by the police and she has no knowledge as to why Patrik had assaulted them.

6. P.W.-1 is Justina Minz, who has stated that the occurrence had taken place on a Wednesday, which was the last day of the year. She and her sister, Balmadina were sitting and Reema aged about 2 years, was eating bread. Patrik came and he assaulted Reema by axe causing her death at the spot. She has stated that Balmadina tried to save her, who was also assaulted by Patrik, but she could not see that. Balmadina was injured and she was taken to hospital. She has identified the accused in the Court. In her cross-examination, she has stated that Patrik is her maternal grandson in relation and the occurrence had taken place in her presence.

7. P.W.-6 Michel Ekka is the informant in the case and the father of the deceased. He has stated that occurrence had taken place on 31.12.2003. Reema was his daughter, who was murdered near the house of Jeetram, a milkman. The occurrence had taken place at about 10 A.M. in the morning. This witness had gone to Premnagar and when he was returning, he was informed that his daughter had been murdered and his mother was also assaulted and injured. By the time, he reached village, the villagers had already taken his mother to the hospital and the villagers informed him that Patrik Bara had assaulted them and they had apprehended him. The blood stained axe was also there. Police reached the place of occurrence, who was 4 brought by none else than the father of the accused. The police recorded his fardbeyan, upon which he had put his signature and another witness had also put his signature and on his identification, the signatures on fardbeyan were marked Exhibits 3 and 3/1. He has stated that police took away Patrik as well as the axe with them. He has identified the accused in the Court. In

his cross examination, he has stated that he had not seen the occurrence himself, rather, he was informed by the villagers. There were injuries on the head of his daughter and mother.

8. P.W.-2 is Thomas Toppo, who has stated that the child of Michel was assaulted by Patrik Bara due to which she died. This witness and other persons had apprehended Patrik, who was produced before the police. The inquest report of the dead body was prepared and the axe by which the murder was committed, and soil were also seized by the police and he had put his signatures on the inquest report as well as seizure list, which he had identified and the same were marked Exhibits 1 and 2. This witness has also identified the accused in the Court. He has also stated that the occurrence had taken place near the house of Jeetram, a milkman, and the grandmother of the deceased was also assaulted by Patrik, when she went to deceaseds rescue. In his cross-examination, this witness has stated that the accused had assaulted the deceased on her head, but he had not seen him assaulting the deceased, rather he had reached the place of occurrence thereafter.

9. P.W.-3 is Jeram Khalko, who has also stated that the occurrence had taken place on the last day of December at about 10-11 A.M., when he was in his house. He heard the noise from near the house of Jeetram, whereupon he went there and saw the dead body of Reema Ekka with head injuries. The grandmother of Reema was also there and villagers were also there. The grandmother of Reema was also injured on her head and body, who 5 was taken to the hospital and the old ladies present there informed that the child was assaulted by Patrik. Patrik was apprehended at the spot. He was produced before the police with the axe, which was also blood stained. This witness has also identified the accused in the Court. He has stated in his cross-examination that his statement was not recorded by the police and he was informed by the villagers about the occurrence.

10. P.W.-4 Jermina Ekka is the mother of the deceased. She has stated that the occurrence had taken place on 31 st December, 2003, when she was in her house. Her daughter Reema Ekka was playing near the house of Jeetram, the milkman, where both the grandmothers of the child were also present. Patrik Bara

came there and assaulted her daughter by tangi due to which she died at the spot. Her elder daughter came running to the house and informed about the occurrence and also informed that grandmother was also unconscious, who was also assaulted by Patrik on her head. She has stated that her mother-in-law was treated at Ranchi. She has stated that when she reached the place of occurrence, Patrik had fled away, but the villagers had apprehended him and had kept him confined and when the police reached, he was handed over to the police. Police had also seen the dead body and also seized the axe. She has also identified the accused in the Court. In her cross-examination, she has stated that she had not seen the occurrence herself.

11. P.W.-5 is Johan Toppo, who has only stated that Patrik Bara was apprehended by the villagers and was produced before the police. The police had also seized the axe. He is the witness to the seizure list and the inquest report, upon which he had put his signatures and he has identified his signatures on both the documents, which were marked exhibits. In his cross-examination, he has stated that he had not seen the occurrence, but he had seen the dead body, and Patrik is his co-villager. 6 12. P.W.-8 is Dr. Manwendra Kumar Singh, the Medical Officer, who had conducted the post-mortem examination on the dead body of the deceased on 31st December, 2003 at 04.00 P.M. and had found the following ante-mortem injuries on the dead body: - (i) One lacerated wound over right parieto-occipital junction size 3 x 3/4 x bone deep. Both bones were fractured. The injury may be caused due to back portion of tangi. (ii) On dissection - meninges and brain tissues were lacerated. Intracranial hematoma present. Heart - all chambers empty large blood vessels collapsed. Stomach partially digested food. All other internal organs were pale in appearance. He has stated that the injuries were ante-mortem in nature caused by hard and blunt substance and the cause of death was haemorrhage. He has identified the post-mortem report to be in his pen and signature, which was marked as Exhibit 4. In his cross-examination, he has stated that the injuries could be caused by falling on a rocky surface.

13. P.W.-9 is Dr. Royen J.

Tiru, who was the Medical Officer of P.H.C., Chainpur, and who had examined the injuries on Balmadina Ekka on 31.12.2003 at 10.30 A.M., which were as follows: -
(i) Incised wound 2 x 1/4 x skin deep over the superior part of left perital area of head. (ii) Bruise 2 x 2 right side of back. He has stated that both the injuries were simple in nature. Injury No.(i) was caused by sharp cutting weapon like axe and injury No.(ii) may be caused by hard and blunt substance like back portion of the axe. He has identified the injury report to be in his pen and signature, which was marked Exhibit 5.

14. P.W.-10 Yogendra Kumar is the Sub Inspector of Police, who has stated that on 31.12.2003, he was posted at Chainpur Police Station. 7 Sri D.K. Mishra, A.S.I. handed over a fardbeyan to the Officer-in-charge of the Police Station. He has identified the fardbeyan to be in handwriting of D.K. Mishra, A.S.I., which was marked Exhibit 6. He has also proved the formal F.I.R., which was marked Exhibit 7 and has also proved the seizure list. He has stated that D.K. Mishra, A.S.I. had produced a seizure list in the police station, which was in his writing and signature and he has proved the seizure list, which was marked as Exhibit 8. He has also proved the inquest report of the dead body, which was marked Exhibit 9. This witness has stated that he was handed over the charge of investigation. He recorded the restatement of the informant and he also visited the place of occurrence, details of which he has given. He has stated that blood stains were found at the place of occurrence. He recorded the statements of the witnesses. The villagers had apprehended the accused, who was produced before the police. On 21.01.2004, he handed over the charge of investigation. He has stated that the dead body was sent for post-mortem by Shri D.K. Mishra, A.S.I.

15. P.W.-11 Devendra Kumar Mishra is the A.S.I. of Police, who has stated that on 31.12.2003, he was posted at Chainpur Police Station. He got the information about the occurrence and upon the instructions of the Officer-In-charge, he went to the place of occurrence, where he recorded the fardbeyan of the informant Michel Ekka, which he has also identified and was earlier proved as Exhibit 6. He has stated that he prepared the inquest report, which he also proved and was earlier marked as Exhibit 9. He has stated that the weapon of offence, i.e., blood stained axe, and the blood stained earth were also seized by him and he had prepared the

seizure list, which also he has proved, which was earlier marked Exhibit 8. He also stated that he also sent the dead body of Reema Ekka for post-mortem examination. He arrested the accused near the place of occurrence and returned to Police Station, and 8 handed over all the documents to the Officer-in-Charge. In his cross-examination, he has stated that the weapon of offence is not present in the Court.

16. On the basis of the evidence on record, the appellant was convicted and sentenced by the Trial Court below, as above.

17. Learned amicus curiae, appearing for the appellant submitted that the prosecution has not been able to prove the charge against the appellant beyond all reasonable doubts, inasmuch as, the witnesses examined in the Court have stated that their statement were not recorded by the police, though they have supported the prosecution case. It is submitted by the learned amicus curiae that there are only two eye witnesses to the occurrence, who are P.W.-7 Balmadina Ekka, the grandmother of the deceased and P.W.-1 Justina Minz. Though these witnesses have supported the prosecution case, but, there are discrepancies in the evidence of these witnesses, as P.W.-1 Justina Minz has stated that at the time of occurrence, the deceased was eating bread, whereas P.W.-7 Balmadina Ekka has stated that at that time, the deceased was playing with other children. It is also submitted by the learned amicus curiae that though Balmadina Ekka has stated that due to the assault, she became unconscious, but, the evidence of P.W.-9 Dr. Royen J.

Tiru and the injury report proved by him as Exhibit 5, clearly show that there were only simple injuries on her, and as such the story that she had become unconscious is not believable. Though she and P.W.-4 Jermina Ekka, the mother of the deceased, have stated that she was treated at Ranchi, but there is no evidence of any treatment of this injured witness at Ranchi. Learned counsel accordingly, submitted that since the evidences are full of contradictions, their evidences cannot be taken into consideration, and in the facts of this case, the appellant is entitled at least to the benefits of doubt. 9 18. Learned counsel for the State, on the other hand, has opposed the prayer, and has submitted that the

prosecution has been able to bring home the charge against the appellant beyond all reasonable doubts, inasmuch as, the eye witness P.W.-7 Balmadina Ekka was also injured in the occurrence, as such her presence at the place of occurrence cannot be doubted. She has specifically stated that while the child was playing with other children, accused Patrik came armed with axe and assaulted her on her head, due to which she died at the spot. She was also assaulted and injured by the accused. Her evidence is also supported by another eye witness P.W.-1 Justina Minz, who was also present there. The fact that the accused appellant had committed the murder is also supported by the other witnesses, namely, P.W.-2 Thomas Toppo, P.W.-3 Jeram Khalko, P.W.-4 Jermina Ekka, the mother of the deceased, as these witnesses reached the place of occurrence soon after the occurrence and the villagers had apprehended the accused and kept him confined, with the blood stained axe and the accused was produced before the police along with blood stained axe. P.W.-10 Yogendra Kumar, who had investigated the case, had also found blood stains at the place of occurrence. The ocular evidence of eye witnesses are fully corroborated by the medical evidence of P.W.-8 Dr. Manwendra Kumar Singh and the post-mortem report proved by him as Exhibit 4, as also the evidence of P.W.-9 Dr. Royen J.

Tiru and the injury report proved by him as Exhibit 5. Learned counsel, accordingly, submitted that the prosecution has been able to bring home the charge against the accused beyond all reasonable doubts and there is no illegality in the impugned Judgment of conviction and Order of sentence passed against the appellant.

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 the 10 eye witnesses P.W.-7 Balmadina Ekka and P.W.-1 Justina Minz, and P.W.-7 Balmadina Ekka was also injured in the occurrence and as such her presence at the place of occurrence cannot be doubted. Though there may be some discrepancies in their evidence, but, both of these witnesses have clearly stated that it was the accused Patrik Bara, who came at the place of occurrence armed with axe and assaulted the girl child with axe resulting in her instantaneous death. When the grandmother Balmadina Ekka wanted to save her she was also

assaulted and injured in the occurrence. The other witnesses, namely, P.W.-2 Thomas Toppo, P.W.-3 Jeram Khalko and P.W.-4 Jermina Ekka also reached the place of occurrence soon after the occurrence and they saw the dead body of the deceased and the grandmother injured and the accused Patrik Bara was also apprehended at the spot with the blood stained axe in his hand and he was kept confined by the villagers and produced before the police with the weapon of occurrence. Ocular evidence of these witnesses are fully supported by the medical evidence of P.W.-8 Dr. Manwendra Kumar Singh and the post-mortem report proved by him as Exhibit 4, who found ante-mortem injuries on the head of the deceased child, causing laceration of brain. The injuries on P.W.-7 Balmadina Ekka have been proved by P.W.-9 Royen J.

Tiru, and in view of the fact that only simple injuries were found on her person, the Court below has rightly acquitted the appellant of the charges under Sections 307 and 326 of the Indian Penal Code and has convicted him for the offence under Section 324 of the Indian Penal Code for assaulting and causing hurt to Balmadina Ekka, by dangerous weapon. We are of the considered view that prosecution has been able to prove the charge against the accused appellant beyond all reasonable doubts and the accused has been rightly held guilty for the offence under Sections 302 and 324 of the Indian Penal Code and sentenced for the same. 11 20. For the foregoing reasons, we do not find any illegality in the impugned Judgment of conviction dated 30th August 2004 and Order of sentence dated 31st August, 2004, passed by learned Additional Sessions Judge, F.T. C.-I, Gumla, in Sessions Trial No.106 of 2004, convicting and sentencing the appellant Patrik Bara for the offence under Sections 302 and 324 of the Indian Penal Code which, we hereby, affirm. The appellant is in custody and serving out the sentence.

21. Before parting with this Judgment, we must record that we have been given able assistance by Sri D.C. Mishra, learned amicus curiae appointed by this Court. We direct, the Secretary, High Court Legal Services Committee to make the payment of prescribed remuneration to the learned amicus curiae. Let a copy of this Judgment be sent to the Secretary, High Court Legal Services Committee, for the needful.

22. In the result, this appeal is dismissed, being devoid of any merit. Let the Lower Court Records be transmitted to the Court concerned forthwith, along with a copy of this Judgment. (H.C. Mishra, J.) (Ananda Sen, J.) High Court of Jharkhand, Ranchi The, 27th July, 2017 Kumar/AFR

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