

Malar Oraon and ors. Vs. State of Bihar

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Court : Patna

Decided On : Feb-22-1999

Judge : G.S. Chaube and P.K. Sarkar, JJ.

Appeal No. : Cr. Appl. No. 11 of 1989 (R)

Appellant : Malar Oraon and ors.

Respondent : State of Bihar

Disposition : Appeal Allowed

Prior history : P.K. Sarkar, J. 1. The appellants have filed this appeal against the judgment and order dated 22-12-1988 passed by Sri Chiranji Singh, IVth Additional Judicial Commissioner, Ranchi, in S.T. No. 211 of 1981 whereby he convicted all the three accused-appellants under Sections 302/34 of the Indian Penal Code and sentenced each of them to undergo R.I. for life. 2. Initially, the F.I.R. was instituted against five persons. However, during the trial, Niklo Oraon and Magho Oraon died, hence the case

Judgement :

P.K. Sarkar, J.

1. The appellants have filed this appeal against the judgment and order dated 22-12-1988 passed by Sri Chiranji Singh, IVth Additional Judicial Commissioner,

Ranch!, in S.T. No. 211 of 1981 whereby he convicted all the three accused-appellants under Sections 302/34 of the Indian Penal Code and sentenced each of them to undergo R.I. for life.

2. Initially, the F.I.R. was instituted against five persons. However, during the trial, Niklo Oraon and Magho Oraon died, hence the case against them abated and only the present three appellants faced the entire trial.

3. Prosecution case, in brief, is that: in the year 1980, Jharia Bhagat (since deceased) had grown chillies (Mircha) plants in his field in village Bajara, In the morning of 28-9-1980. Jharia Bhagat along with his son Etwa Oraon and daughter Somari had gone to pluck chilli in his aforesaid field. While Jharia Bhagat was plucking chilli from his field, accused Malar Oraon, Parto Oraon and Chumanu Oraon, along with two others, namely, Magho Oraon and Niklo Oraon (who died during the pendency of the trial) came there armed with lathis. All the aforesaid hereon assaulted Jharia Bhagat with lathi. Seeing her father being assaulted by the accused-persons, Somari, daughter of Jharia Bhagat rushed from the field to her uncle Chumanu Bhagat, who was engaged in thrashing paddy grain in his Khalian; Somari narrated the occurrence to Chumanu Bhagat that the aforesaid accused-persons were assaulting his father in his field. Chumanu and Somari thereafter went to the chilli field of Jharia Bhagat. All the aforesaid accused-persons were still present in the field of Jharia Bhagat and were assaulting him with lathi but seeing Chumanu Bhagat, they ran away from the place. When Chumanu Bhagat reached near Jharia Bhagat, he saw his brother having fallen down, sustaining several injuries. Jharia Bhagat was still alive, who disclosed the names of the accused-persons being his assailants, namely, Malar Oraon, Parto Oraon, Chumanu Oraon, Magho Oraon and Niklo Oraon. Jharia Oraon died thereafter. Chumanu Bhagat then went to the police station at Mandar along with co-villager Chandar, where he gave information of the occurrence relating to the death of his brother Jharia Bhagat. The police recorded the statement of Chumanu Bhagat, which was read over and explained to him whereupon he gave his L.T.I. on the same. The F.I.R. was drawn up on the basis of the aforesaid statement and the police took up the investigation and came to the place of occurrence on 29-9-1980 at 8.30 a.m. The Police Officer inspected the deadbody of Jharia Bhagat in

presence of the witnesses and prepared the inquest report. The Police Officer also searched the house of accused Magho Oraon and recovered a lathi from there having blood stains. He prepared the seizure list in this regard in presence of the witnesses. The Police Officer also sent the deadbody of Jharia Bhagat to R.M.C.H., Ranchi, for post-mortem examination. The police after completing investigation submitted charge-sheet in this case under Section 302 of the Indian Penal Code against the three appellants and two others namely, Niklo Oraon and Magho Oraon (who are dead now). The cognizance was accordingly taken in the case and later on the same was committed to the Court of Session by the learned Judicial Magistrate for its disposal. The learned Judicial Commission u, Ranchi, transferred this case to the Court of Sri S.K. Dwedi, Addl. Judicial Commissioner, for its disposal on 1-9-1981 but subsequently on transfer of Sri S.K. Dwedi the case was transferred to the Court of Sri D.P. Sinha, Addl. Judicial Commissioner, Ranchi, on 15-10-1982. Subsequently, this case was transferred to the Court of Sri Chiranji Singh, IVth Addl. Judicial Commissioner, Ranchi, who in his impugned judgment and order found the three accused-appellants guilty and convicted them under Sections 302/34 of the Indian Penal Code and sentenced each of them to undergo R.I. for life as already indicated above.

4. The motive of the occurrence as it appears from the record is a long-standing litigation in between the deceased Jharia Bhagat and then aforesaid accused-persons in respect of the P.O. land. The deceased Jharia Bhagat had won all the litigations. Thus, he was in the possession of the land and had grown the chilli plants for which the accused-persons were annoyed and due to this annoyance/enmity, they committed murder of Jharia Bhagat by assaulting him with lathi as alleged.

5. The defence of the appellants appears to have been complete denial of the charges levelled against them. However, they did not produce any evidence in their defence.

6. The prosecution in all has examined 9 witnesses in support of its allegation levelled against the accused-persons; out of the aforesaid 9 witnesses; P.W. 2 Etwa Oraon, son of the deceased and P.W. 3 Somari daughter of the deceased,

are eye-witnesses of the entire occurrence as they were plucking chillis with their father when the occurrence happened. P.W. 1 Chumanu Bhagat, who is the informant in this case, has also claimed that he saw the accused-persons running away from the place of occurrence and his brother who was still alive while he reached the place of occurrence, told him the names of the five accused-persons, who assaulted him and subsequently, he died. P.W. 5 Bandhu Bhagat is co-villager who has also claimed to be an eye-witness, P.W. 4 Jabbar Khan is a witness on the point of inquest, P.W. 6 Hosu Oraon is a hear-say witness and P.W. 9 William Minz is a formal witness. P.W. 7 Dr. R. S. Prasad, who was present while P.W. 8 Dr. Renu Bala was conducting postmortem examination. Thus, P.W. 7 and P.W. 8 are the witnesses on the point of post-mortem of the deadbody of the deceased.

7. P.Ws. 2 and 3 who are son and daughter of the deceased Jharia Bhagat have clearly stated that they went with their father to the chilli field for plucking the chillis in the morning on the day of occurrence. When they were plucking chillis along with his father Jharia Bhagat the accused Magho Oraon, Niklo Oraon, Chumanu Oraon, Malar Oraon and Parto Oraon came there and assaulted their father with lathi. P.W. 3 has further stated that the thereafter ran to call her uncle Chumanu Bhagat and her brother remained in the field. She informed her uncle and when she came along with her uncle, at that time, the accused-persons were still present in the field and were assaulting her father. She has also stated that her father named all the five accused-persons before her uncle and died after drinking some water. P.W. 2 has also corroborated the statement of P.W. 3, inasmuch as, he has also stated that when his father was being assaulted he along with his sister was near him and plucking chillis and then Somari i.e. his sister went to call his uncle and his uncle came and gave some water to his father. He has also stated that he was in the field when his father died. Thus, both P.Ws. 2 and 3 have fully corroborated each other and the fact that these three appellants along with two others assaulted their father Jharia Bhagat causing his death.

8. P.W. 1, who is the brother of the deceased and the informant of the case has also stated that about 6 to 7 years before, his elder brother Jharia Bhagat went to pluck chillis in the field along with his son Etwa aged about 10 years and daughter

Somari aged about 12 years, at that time he was in his Khalihan. P.W. 1 has further stated that his niece Somari came running and told him that her father was being assaulted by Niklo Oraon, Magho Oraon, Chumanu Oraon, Malar Oraon and Parto Oraon, so he ran towards the place of occurrence along with Somari and found the accused-persons who were armed with lathi, running away from the chilli field. He also went near his brother, who was in injured condition. His brother told him the names of all the accused-persons, namely, Malar Oraon, Niklo Oraon, Magho Oraon, Chumanu Oraon and Parto Oraon, who have assaulted him with lathi, and then he died. P.W. 1 has also stated that there was a litigation in between his brother and the accused-persons over the land in question. The case was won by his brother, due to that enmity accused-persons committed murder of his brother, P.W; 1 has further stated that thereafter, he went to Mandar Police station and gave his statement, which was read over and explained to him in Hindi and finding it correct he gave his L.T.I. on the same. In his cross-examination, P.W. 1 has clearly stated that his nephew was at the place of occurrence along with his brother. Thus, the presence of P.W. 2 has also been corroborated by P.W. 1 in his cross-examination. Thus, the evidence of this P.W. also fully corroborates the evidence of P.Ws. 2 and 3 and also the occurrence. P.W. 1 in his cross-examination has stated that the Khalihan in which he was working is at a distance of 11/2 Mile from the chilli field. The Khalihan is outside the village. About half an hour time is necessary to reach the chilli field from the Khalihan.

9. The learned Counsel for the appellants thus, contended that the statement of P.W. 1 that he saw the accused-persons running away from the chilli field does not appear to be correct, as the accused-persons are not expected to stay at the same place for half an hour. This fact also raises doubt on the statement of this witness that his brother told him the names of the accused-persons before his death. The evidence of P.Ws. 2 and 3, who are aged about 14 and 16 years respectively and were children at the time of occurrence have fully corroborated the fact that while their uncle came to the place of occurrence on being called by P.W. 3, the accused-persons were just running away from the chilli field. They have also stated that his father before death and named the accused-persons before his uncle. The evidence of these witnesses, who are expected to speak the truth, thus, have fully corroborated the fact that Jharia Bhagat was still alive while the

informant Chumanu Bhagat reached the place of occurrence and he told the names of accused-persons before him. P.W. 2 in his cross-examination by the Court clearly stated that he saw his father being assaulted by the accused-persons. He has also clearly stated to Court in question that he along with his father went to pluck Chilli and saw his father being assaulted- P.W. 3 has also consistently said that he saw the occurrence, P.W. 3 has also stated that at the time of occurrence, Bandhu Bhagat came to the place of occurrence from his field, whose field is at a distance of 100 yards from her field and Bandhu Bhagat was working in his field. At the time when Bandhu came, the accused-persons did not run away from their field. Bandhu Bhagat did not protest.

10. P.W. 5 Bandhu Bhagat has stated that the occurrence happened about 7 years before. He was plucking Bhindi in his field. His field is near chilli field of Jharia Bhagat. At that time, Jharia Bhagat was plucking chilli when Malar, Parto, Niklo, Chumanu and Magho came armed with lathis and started assaulting Jharia Bhagat, at that time son and daughter of Jharia Bhagat were also with him. In his cross-examination, P.W. 5 has stated that he saw the occurrence from a very close range and he has denied that he did not see the occurrence. P.W. 5 has, however, stated that he did not say about the occurrence to any person. Thus, evidence of P.W. 5 also fully corroborates the evidence of P.Ws. 1, 2 and 3 and are quite consistent with the prosecution case.

11. P.W. 6 has stated that co-villager Magho Oraon, Mahar, Niklo, Parto and Chumanu came and told him that they had killed Jharia Bhagat. They have also said that they had killed Jharia Bhagat with lathi, fists and slaps, on that day Jharia died. He has also stated that the police searched the house of Magho in his presence and recovered lathi having blood stains and prepared a seizure list, on which he has put his L.T.I. Thus, in the examination-in-chief P.W. 6 has stated that accused-persons told him that they had killed Jharia Bhagat. In his cross-examination, he has stated that Chumanu Bhagat told him the aforesaid fact after 8 to 10 days of the death of Jharia Bhagat.

12. P.W. 9 has proved Ext. 3, i.e., the F.I.R. He has also proved Ext. 4, i.e., inquest report and Ext. 5 Seizure list prepared by S.I. In his cross-examination, he

has stated that these were not written in his presence. P.W. 4 Jabbar Khan has stated that about 7 years before at about 9 a.m. the police prepared the inquest report of the dead-body of Jharia Bhagat in his presence, he gave his signature on the said paper. He has proved Ext. 1, i.e., his signature on the inquest report. In his cross-examination, P.W. 4 has stated that adjacent to the chilli field, there is a drain and the dead-body was in drain. P.W, 3 has also stated in her cross-examination that the dead-body of her father was in the drain. Since the drain and land are adjacent to each other, there does not appear to be any discrepancy on the point of place of occurrence.

13. P.W. 8 is Dr. Renu Bala, Associate Professor Forensic Medicine, R.M.C.H., Ranchi. She has stated that on 30-09-1980, she was posted at R.M.C.H., Ranchi, on that day at about 11.30 hours she held post-mortem examination on the deadbody of Jharia Bhagat and found the following injuries on his person:

A. Abrasion.

1. 5x2 c.m. and 9x2 c.m. x 9 x 2 c.m. on the left scapular region.
2. 6x2 c.m. x 4 x 2 c.m. x 4 x 2 c.m. and 5x2 c.m. on the left infra scapular region.
3. 6x2 c.m., 8x2 c.m. and 10 x 2 c.m. on the right scapular region.
4. 2x1 cm. 1x1 c.m. on the back of right elbow with fracture of right arm bone.
5. 2x2 c.m. x 2 x 1 c.m. on the point of right knee.

B. Bruise.

1. 28 x 2 c.m., 8x2 c.m. and 8x2 c.m. on the right scapular and infra scapular Region vertically situated.
2. 5. x 2 c.m., 8x2 c.m. and 2 x 1 c.m. on the left tempra region back.
3. 4x2 c.m. and 5x2 c.m. and on the right side of the chest.
4. 4. x 2 c.m. on the forehead.

C. Lacerated wound.

1. 1 x 1 c.m. on the right parietal eminence.

D. Internal.

1. Fracture of right 6 to 10 ribs, laceration of right lungs with its chest cavity.

In the opinion of P.W. 8, all the injuries found were ante-mortem caused by hard and blunt substance such as lathi. She has proved Ext. 2, i.e., the post-mortem examination report, prepared by her. In her cross-examination, she has stated that she did not know the deceased from before.

14. P.W. 7 Dr. R.S. Prasad has stated that on 30-9-1980 he was posted in the R.M.C.H., Ranchi as Head of the Department of Forensic Science Department, On that date in his presence, post-mortem of Jharia Bhagat was conducted by Dr. Renubala, who was demonstrator in his Department at that time. She prepared the post-mortem report in his presence, on which he put his signature, which is Ext. 1/4. In his cross-examination, P.W. 7 has stated that he did not participate in the post-mortem examination. From the evidence of P.Ws. 7 and 8 stated above, it appears that the post-mortem on the dead-body of Jharia Bhagat was conducted on 30-9-1980. P.W. 8 has clearly stated about the different injuries, which were ante-mortem in nature and were sufficient in ordinary course of nature to cause death. From the injuries, it also appears that all the injuries were caused by lathi,

15. From the evidence of other witnesses mainly P.Ws. 2 and 3, it is established that the deceased Jharia Bhagat died on the date and time of occurrence and the death was homicidal.

16. Now the only question, therefore, is whether the death was caused by accused-appellants along with two others? From the evidence of the eye-witnesses, i.e., P.Ws. 2, 3, 5 and also P.W. 1 and P.W. 4, it is fully established that the accused-appellants along with two others assaulted Jharia Bhagat with lathi, which resulted in his death. The defence had cross-examined the witnesses at length but there is nothing by which the evidence of these P.Ws. can be disbelieved. On the other hand, I find that in the cross-examination also, the

witnesses have supported their earlier version.

17. The Investigating Officer has not been examined in this case. The learned Counsel for the appellants has stated that non-examination of the I.O. has prejudiced the accused-persons since they could not draw the attention of the witnesses to their certain statements made before the I.O. for corroboration or contradiction. On a careful scrutiny of the entire evidence, it appears that there is absolutely nothing in the evidence of these eye-witnesses by which their evidence can be fully discarded. Thus, non-examination of the I.O. does not affect the prosecution case. It is, therefore, held that there is some contradiction in the statements of witnesses regarding the fact where the deadbody was found. P.W. 3 and P.W. 4 have stated that the deadbody was found on the drain. However, this fact does not take away the merit of the entire prosecution case, in view of the fact that both the Nala and the field are adjacent to each other. In that view of the matter, I am of the opinion that the prosecution evidence is fully consistent. The prosecution has, therefore, fully established the fact beyond all shadow of reasonable doubts that these three appellants along with two others came armed with lathi to the chilli field of the deceased Jharia Bhagat at the time of occurrence and assaulted Jharia Bhagat resulting into his death. It also appears that there was prior litigation in between the deceased and the accused-persons which appears to be the motive for the occurrence.

18. The learned Counsel for the appellants, however, stated that the manner in which the assault was made and the different injuries found by the Doctor, who conducted the post-mortem examination, clearly establishes the fact that the assault was not made with an intention to cause death. It will appear that a number of injuries were found on the deadbody but most of the injuries are on the non-vital part of the body. In that view of the matter, it is also submitted that, even if, the occurrence found established, the prosecution has not been able to establish the fact that the offence falls within the ambit of Section 302 of the Indian Penal Code. On the other hand, the offence appears to be homicidal not amounting to murder, comes under the definition of Section 304(11) of the Indian Penal Code. The learned A.P.P. appearing on behalf of the prosecution does not contest this assertion of the learned Counsel for the appellants-seriously. It is true

that the accused-persons came armed with lathi and assaulted the deceased causing injuries which ultimately caused his death, but the prosecution has not been able to establish the fact that the said assault was made with intention to cause death as most of the injuries found are on the non-vital part of the body. In that view of the matter, I feel-that the offence committed by the accused-persons, mainly come under Section 304 Part (II) of the Indian Penal Code and not under Section 302 of the Indian Penal Code. Accordingly, the conviction and sentence recorded by the Court below does not appear to be fully consistent with the facts and circumstances of the case and requires interference to the extent as mentioned above. I, therefore, find the accused-appellants guilty under Section 304(II) of the Indian Penal Code and sentence each of the accused-appellants to undergo R.I. for 3 years. It also appears from the record that the children of the deceased i.e. P.Ws, 2 and 3 were children at the time of occurrence and the death of their father made them helpless. They are expected to have gone through emence suffering and deserve to be compensated. In that view of the matter each of the appellants is also sentenced to pay a fine of Rs. 5,000/- (Rupees five thousand) each and the aforesaid amount of Rs. 15.000/- will be paid to the children of the deceased Jharia Bhagat as compensation. If the appellants or any of them fail(s) to pay the aforesaid amount of Rs. 5,000/- (Rupees five thousand), they or he are/is sentenced to undergo R.I. for 2(Two) years more.

19. In the result, the appeal is allowed in part and the judgment and order of conviction and sentence is modified accordingly. The accused-persons are on bail, their bail-bonds are cancelled and they are directed to surrender before the Court below forthwith.

G.S. Chaube, J.

20. I agree.