

Birsa Oraon Vs. State of Bihar

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Court : Patna

Decided On : May-16-1996

Judge : S.K. Chattopadhyaya and N.N. Singh, JJ.

Appeal No. : Criminal Appeal No. 93 of 1993 (R)

Appellant : Birsa Oraon

Respondent : State of Bihar

Advocate for Pet/Ap. : Mr. P.P.N. Roy

Disposition : Appeal Allowed

Judgement :

S.K. Chattopadhyaya and N.N. Singh, JJ.

1. The sole appellant, being aggrieved by the judgment and order of conviction and sentence, dated 24th April, 1993 and 26th April, 1993, respectively, passed by the 6th Additional Commissioner, Ranchi, has preferred this appeal.

2. According to the prosecution case, , the appellant was a friend of the deceased, Pancham and at about 8 p.m. on 11.5.90, he came to the house of Pancham and called him. Both of them left the house and after 10-15 minute of their departure, the further of the deceased (P.W.1) heard the sound of Pancham as 'Baehao-Bachao'. He along with other family members, rushed towards the 'Akhara' and saw

that the appellant was assaulting Pancham by 'Tangi'. On Seeing the family members, the appellant fled away from the place of occurrence. Pancham died at the spot. It is the case, of the prosecution that the appellant and the deceased were Homeguards and enmity between was not known to the informer on' 12.5.90 at 11 hours, Ferdbeyan of the informant was recorded and thereafter a formal F.I.R. was drawn-up at 18 hours. After completion of the investigation, charge-sheet was submitted and the appellant was put on trial.

3. There are six prosecution witnesses, out of whom, P.W. 1, 2 and 3 are the eye witnesses. P.W. 1 is the informant and father of the deceased. P.W. 2 is the sister of P.W. 1, whereas P.W. 3 is the mother of the deceased, i.e. wife of P.W. 1 P.W. 4 is the Chowkidar of the village. P.W. 5 is the doctor, who held the postmortem examination and P.W. 6 is constable, who proved the F.I.R. The I.O. of the case, since dead, was not examined.

4. In the F.I.R. lodged by P.W. 1 it is stated that on the fateful night, the appellant came to the house of the informant and called for Pancham, both of them went away and soon thereafter alarm of Pancham was heard by the informant and his family members. They rushed to the place of occurrence and found that the appellant was assaulting Pancham with 'Tangi' in his hand. On seeing the informant and his family members the appellant took to his heels. In his evidence, P.W. 1 has deposed that he saw the assault from a distance of 30 feet, when he reached the place of occurrence. He found that Pantrham was lying on the ground having injuries in his neck and temporal region. Both of them were working as Home-guards, but his son, Pancham got the appointment, whereas the appellant did not get it. In his cross-examination he stated that before the time of occurrence, except Pahcnam all of his family members had taken their meals. He saw the appellant from a distance of 4-5 feet and at that time, his wife and sister were also there and they tried to save Pancham. He saw the appellant- assaulting the deceased by holding a 'Tangi' in his hand. He saw that at the time of assault the face of the deceased was on the upper side and the appellant's face was towards the west. After the deceased fell down, the appellant repeated the blows. He further deposed that on their alarm more than 20-25 villagers assembled there. However he has stated that except, he his wife and sister no body had seen the

actual assault. According to him, Chowkidar and other villagers remained near the dead body for the whole night, but none of them is a witness in this case. P.W. 1 had gone to the police station at 7 a.m. next day and the S.I. of police was told about the occurrence. He also disclosed the name of the appellant and the statement recorded by the S.I. of police was explained to him.

5. P.W. 2, the sister of P.W. 1 does not reside with him and she had come to her brother's place for some time on that very day. She corroborates the evidence of P.W. 1 so far the assault part is concerned. According to her evidence, both Pancham and the appellant were working as Home-guards and the appointment of the appellant was permanent. She was deposed that the 'Akshara' is about 100 yards and is surrounded by the houses on all four sides and when she reached the place of occurrence, no body was there in those houses. According to her, she and Budhni only came out from the house and both of them reached the place of occurrence and when she reached the place of occurrence, his nephew, Pancham, was lying on the ground. They raised alarm on which several people came out from those houses. They were more 20-25 in number. Nobody asked any question to her. However, she could not say the name of anyone. According to her, the 'Tangi' was shining in the light of the moon. She stated that even when Pancham fell down on the ground, the appellant assaulted him. The deceased received injuries on his neck, head, face and near the eyes. The appellant was assaulting with Tangi and such assault was 10-12 times. She stated that she and her sister-in-law caught hold of the deceased and her wearing were smeared with blood, which was shown to the police when they came next day, but those were not seized. She did not go to 'Akshara' with the police. According to her the Chowkidar came to the spot on the same night, but she did not disclose anything before him.

6. P.W. 3, another eye witness is the mother of the deceased. In her examination, she has corroborated the evidence of P.Ws. 1 and 2 about the assault. In her cross-examination, she has deposed that at the time of occurrence, moon was there and the time of occurrence was 8 p.m. According to her, the 'Akshara' and her house is adjacent to each other and she was the first to rush out of her house on hearing the 'Hulla' raised by the deceased. She saw the deceased lying on the

ground in a pool of blood. She came out of the house shouting and they villagers also followed her. She laid down on the body of her son. She has further deposed that the villagers did not chase the appellant because he had already left the place of occurrence. The Chowkidar came in the night and at that time his son was breathing his last. She disclosed the name of the appellant before the Chowkidar.

7. P.W. 4 is the Chwkidar of the village. According to him at about 12 hours in the night, the occurrence took place. His father was informed about the murder at about quarter past 12 hours in the night and at that time he was in his house. Next day at about 10-11 hours the police came and the blood stained earth was seized and inquest report was made on which he out his signature. He has proved his signature which in marked as Ext. In his cross-examination, he stated that he was not examined by the police at any time and his deposition before the court is his first evidence in the case. He stated that several persons had assembled near the dead body, but he does not know any body. The I.O. did not seize the blood stained clothes from anybody. According to him, there were some stains of. blood in the Lungi and Ganji of the deceased. These were not seized by the I.O.

8. Next witness, P.W. 5 is the doctor, who held postmortem examination on the dead body of Pancham. He found one abrasion over the lateral side of the left neck and five lacerated wounds on the left forehead with depressed fracture, bone deep wound over the right cheek with depressed fracture of maxilla, bone deep injury over the left upper lip with fracture of maxilla, bone deep injury over left temporal perital region with depressed fracture and injury over soft tissue over left temporal region. In the opinion of the doctor, all the injuries were antemortem caused by hard blunt substance. He opined the these injuries could have been possible by the blunt portion of the 'Tangi'. In his cross-examination, he has admitted that he could not say the size of the 'Tangi' or the size of the blunt portion and that the injuries found on the person of the deceased were not possible by sharp cutting weapon. According to him, the injuries might have been caused from all sides.

9. P.W. 6 is the constable who has proved the ferdbeyan which is in the hand writing of the I.O. He has also proved the postmortem report.

10. From the aforesaid evidence and specially the deposition of the three eye witnesses, at the first instance, it is possible to had that it is the appellant who committed the crime, but before coming to such finding close scrutiny of their evidence should be made. Admittedly, there was no motive either for the murder or for the false implication of the appellant by the family members of the deceased. In these circumstances, the evidence adduced by the prosecution has to be scrutinized cautiously. According to P.W. 1, the informant, he saw the appellant assaulting the deceased from a distance of 30 feet and at the that time her wife and sister were present. This part of his evidence has been corroborated by P.Ws. 2 and 3, when they deposed that they found the appellant assaulting the deceased. P.W. 3 is the mother of the deceased, who deposed that the appellant was inflicting cut injuries on the deceased. In the cross-examination, P.W. 1 has given a vivid description of the nature of the assault given by the appellant. P.W. 2 in her cross-examination has disposed that she when along with others reached the place of occurrence, she found that her nephew Pancham was lying on the ground. Similar is the deposition of P.W. 3, when she has deposed in her cross-examination that she found Pancham lying on the ground in a pool of blood. She further stated that she saw the assault being made by 'Tangi', when she reached the place of occurrence. According to her, her son was breathing his- last when Chawkidar arrived there.

11. From the discussions above, one thing is clear that P.W. 2 and 3 could not see the actual assault on Pancham. In their examination-in-chief, both of them have tried to support the statement of the informant by saying that they saw the appellant assaulting the deceased. This contradictory statements of P.Ws. 2 and 3 lead us to believe that atleast these two witnesses were not the eye witnesses to the actual occurrence.

12. P.W. 1, though consistent in his evidence, but his evidence also raises some suspicion considering the vivid description of assault alleged the have been given by the appellant on the deceased. Though, no specific question was put regarding means of identification, but even assuming that it was a moon-lit night, in our considered opinion, from a distance of 30 feet, P.W. 1 could not have seen the manner of assault as described by him in his evidence. Not only this, P.W. 1 has

also specifically stated about the position of the face of the appellant, when he was assaulting the deceased these exaggerations are with a view to strengthen the prosecution case.

13. The another important aspect of the case to be noticed is that according to P.W. 1, the informant, on the next morning at 7 a.m. he went to the police station and reported the matter to the S.I. of police, even disclosing the name of the appellant. His statement was recorded and read over to him. If this be the actual position, this statement recorded by the S.I. of police at 7 a.m. regarding the occurrence, must be treated as the first statement of the informant. This statement has not been brought on record before the trial court. It has rightly been contended by Mr. P.P.N. Roy, learned Counsel for the appellant that if the evidence of P.W. 1 in this regard is to be believed, then the prosecution must satisfy the court as to under what circumstances, this first statement of the informant was withheld from the Court. Mr. Rajgarhia, learned A.P.P. has failed to answer this question.

14. Another factor of the case is that the I.O. died before he could be examined on behalf of the prosecution. All these matters could have been brought from him, if he would have been examined at the trial. However, the fact remains that the first statement of P.W. 1, before the S.I. of police, which was recorded in writing was not produced before the court and for this reason, the appellant must get the benefit.

15. The last but not the least important factor is the postmortem report as well as the inquest report. According to P.W. 1, when Pancham went away with the appellant, he did not take his meal and that all other members of the family had taken their meals. Both of them went away at 8 p.m. The dead body of Pancham was examined by the Doctor on 12.5.90, at 16 hours. The doctor found the stomach full of rice particles. Though the defence has not put any question to the Doctor as to by which time rice could have been digested, but the fact remains that even at 4 p.m. on 12.5.90, the stomach of the deceased was full of rice particles. This contradicts the statement of P.W. 1. Now coming to the inquest report, we may notice that the I.O. found incised injuries on the nose and cheek etc., whereas, no such incised injury was found by the doctor who held the postmortem

examination.

16. After considering the nature of evidence adduced on behalf of the prosecution, we are of the opinion that the prosecution has failed to prove the guilt against the appellant beyond all reasonable doubts and for which the appellant is entitled for the benefit of doubt.

17. In the result, this appeal is allowed, the order of conviction and sentence passed by the trial court are set aside and the appellant, who is in jail, is directed to be released forthwith, if not required in any other case.

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