

Chakru Oraon Vs. State of Bihar

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Court : Patna

Decided On : Dec-20-1996

Judge : Loknath Prasad and Prasanta Kumar Sarkar, JJ.

Appeal No. : Criminal Appeal No. 186 of 1993 (R)

Appellant : Chakru Oraon

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

Prasanta Kumar Sarkar, J.

1. This appeal is directed against the judgment and order of conviction and sentence dated 1.9.1993 passed by Sri Lakhani Kumar Sahay, Addl. Judicial Commissioner, Lohardaga, in S.T. No. 413/89/10/90, whereby and whereunder he convicted and sentenced the accused-appellant alongwith one another under Section 302/34 of the Indian Penal Code and to under go R.I. for life.

2. At the outset it may be mentioned here that there were two accused in this Sessions Trial, namely, this present accused-appellant Chakru Oraon and one Bhudhuwa Oraon only Chakru Oraon has come up before this Court in this Cr. Appeal and thus, he is the only accused-appellant. Nether the defence counsel nor

the Addl. P.P. could say whether Bhudhuwa Oraon preferred any appeal or not.

3. The prosecution case, in brief, is that on 27.4.1989 at about 5.45 p.m. when the informant Harinath Oraon (P.W. 8) returned from Pakhar Mines after his duties hour, he searched his wife Hiramani, but did not find her. As he was to take his cycle inside his house by opening the door, he found his wife lying on the Dhaba and her body was covered with a blanket. As he removed the blanket he saw Hiramani dead with bleeding injuries on her head and neck and also found the body in pool of blood. The informant, thereafter, asked his son Bimal Oraon, who was aged about nine years, and Basau Oraon, who was aged about six years, about the occurrence. From them the informant learnt that accused Bhudhuwa Oraon armed with an axe and accused-appellant Chakru Oraon armed with Kathi (a piece of wood) had come and assaulted their mother, as a result she died. They also informed that sheolal Bhagar also saw the occurrence. the informant further stated that the accused-appellant and that Bhudhuwa Oraon used to call the deceased as witch and they had threatened to assault. On 27.4.1989, A.S.I. Shyam Nandan Sharma, who was posted at Kisko P.S. heard a rumour that a murder having taken place in Bagree area, So he made station diary Entry regarding the information and went to the village Bagree Baudi Toli and recorded the fardbeyan (Ext. 7/1) of the informant Harinath Oraon, which was read over and explained to him and finding it true, Harinath Oraon signed on the same (Ext.7) the signature of the informant Bhaiya Ram, who was also present there, had also signed on the fardbeyan as a witness (Ext. 7/2). Thereafter, the said A.S.I, forwarded the fardbeyan to Kisko P.S. for instituting an F.I.R. with his endorsement and signature on the fard beyan to (Ext. 7/3) S.I. Rajdeo Singh O/C Kisko P.S. drawn up a formal F.I.R. (Ext. 8) under Sections 302 of the Indian Penal Code against the accused-appellant and one Bhudhuwa Oraon. The police also prepared an inquest of the dead body and got the autopsy of the dead body of the deceased and after completing the investigation, submitted the charge sheet, so the case was ultimately hand and disposed of in the manner aforementioned.

4. The prosecution in all examined 9 witnesses in this case; out of whom P.W. 8 Harinath Oraon is the informant, he has not seen the actual occurrence. However,

he has clearly stated that on his return, he found the dead body of his wife on the Dhaba. P.W. 2 Vijay Oraon and P.W. 5 Basu Oraon are the two sons of the informant and the deceased who actually saw their mother being assaulted and murdered and claimed to be eye witnesses. From their statements also it is clear that on the day of occurrence their mother Hiramani Oraon was done to death. The other eye witness according to the fardbeyan and the statement of the above witnesses is P.W. 4 Shivilal Bhagat. This witness, however, has not supported the fact that he saw the occurrence and was declared hostile. However, from his evidence also it appears that he is a neighbour of the informant and on the day of occurrence when he was taking meal he heard some Gulla and also cry of Hiramani Oraon asking for help. P.W. 1, Dr. Prem Shankar Prasad Gupta, he is the Doctor, who conducted the postmortem examination. From his statement also it is clear that he conducted the autopsy on the dead body of the deceased Hiramani on 28.4.1989. According to him also the death was due to injuries, which were antemortem. P.W. 3 Bhuju Oraon & P.W. 6 Santosh Gope are the witnesses on the search and seizure. P.W. 3 has stated that on the day of occurrence he had gone to the Mines for work. When he returned at about 6 P.M. he found the dead body of the wife of Harinath Oraon in his house. There were injuries on the head and neck. The police prepared an inquest report in his presence and also in presence of other witness in which he gave his L.T.I. The police also seized an axe and a piece of fire wood near the dead body of the deceased, wife of Harinath Oraon in his presence and also in presence of some other witnesses and prepared a seizure list in which he gave his L.T.I.. Thus this witness also seen the dead body of the deceased and has also stated that the inquest report was prepared in his presence. P.W. 6 has also stated that in the evening on the day of occurrence when he came near the house of the informant Harinath Oraon, he found the police there and the dead body of the wife of Harinath Oraon was also lying there. At a distance of dead body there were a blood stain axe and a fire wood. Both the articles were seized by the police in his presence and blood stain mud, was also seized in his presence and he gave his signature. He proved his signature on the carbon copy of the seizure list (Ext. 2). He has also stated that the police prepared inquest report in his presence in which he gave his signature. He has also proved his signature on the carbon copy of the inquest report, which is Ext. 3. Thus, from

the statement of this witness it appears that he saw the dead body of the deceased. P.W. 7 is Sri P.K. Gupta, Judicial Magistrate, who recorded the statements of witnesses under Section 164 of the Code of Criminal Procedure and P.W. 9 is Sri Shyam Nandar Sharma, police officer, who conducted the investigation in this case.

5. The aforesaid fact, therefore, leads to me to the conclusion that the murder of the wife of the informant Harinath Oraon was committed on the day of occurrence. Thus, the fact of murder of the deceased, wife of the informant Harimani Oraon, has been clearly established by the prosecution. The defence has also not stated specifically against the fact that the wife of the informant is not dead. Thus, the point for consideration is whether the accused appellant Chakru Oraon and his another colleague Bhudhuwa Oraon committed the aforesaid murder of the informant's wife or not?

6. From the evidence adduced by the prosecution it appears that only P.W. 2 and P. W. 5, the two minor sons of the informant are the eye witnesses of the occurrence, who were present in the house at the time of their mother's murder. These two boys also stated that P.W. 4 Shiv Lal Bhagat, who appears to be a neighbourer, also came at the time of occurrence and saw the occurrence. The evidence of P.W. 2 and P.W. 5 fully supports the fact that these accused, i.e. accused appellant Chakru Oraon and another accused Bhudhuwa Oraon (who is not an appellant in this case) came to their house and committed murder of their mother. They have also stated that when their father returned, after his duty, was over, then also told him about the occurrence. Admittedly P.W. 2 was aged about 10 years on the day of his examination in the year 1990. Thus as per the informant's statement he was aged about 9 years on the day of occurrence. Similarly P.W. 5 as per the informant was aged about 6 years on the day of occurrence but from the statement it appears that his age has been recorded as 6 years on the day of his evidence by the Trial Court in the year 1991. Thus according to this calculation he would have been aged about 4 years on the day of occurrence. However, this fact loses its importance, in view of the fact that the accused appellant had come to the house and assaulted and murdered the mother of this witness. This witness admittedly was a child on the date of occurrence. Since

he was a villager therefore, there may be some discrepancy in the estimation of the age.

7. Mr. S.N. Lal, learned Counsel appearing for the accused-appellant submitted that the aforesaid two eye witnesses who are child witnesses, cannot be fully relied and no conviction can be based on their statements. He further submitted that it is an established principle of law that the evidence of the child witness should be considered with proper care and caution. The evidence of these witnesses is full of contradiction and, hence they are not worth reliance. In this connection Mr. Lal stated that in his examination-in-chief itself P.W. 2, who is the elder brother of the two brothers, has given the time of occurrence in the day in between 12-1 P.M.. He further stated that this accused appellant Chakru Oraon and Bhudhuwa Oraon both assaulted his mother with fire wood, and subsequently both of them brought the Dhabia from their house and assaulted their mother with the said Dhabia and committed her murder, whereas P.W. 5 has stated that Bhudhuwa was armed with a Tangi and Charku, accused-appellant was armed with a piece of fire wood and they assaulted their mother by dragging her on the courtyard. This witness also stated that Budhuwa assaulted her mother on the neck with knife and, thereafter, they ran away. Thus according to the elder brother initially both the accused persons came with fire wood and assaulted his mother and, thereafter, they had brought a Dhabia and assaulted her and committed her murder, whereas the other brother is saying that the accused appellant came with a fire wood and Bhudhuwa came with Tangi and Bhudhuwa cut the throat of their mother with knife. learned Counsel for the defence therefore, submits that these are vital conditions regarding instruments through which the murder was committed.

8. From the cross-examination of these witnesses it will appear that they have claimed themselves to be the student but they have stated in their cross-examination that they did not go to the school on that day. Moreover, though P.W. 2 has given time of the occurrence but in his examination-in-chief he could not say the same, the time of her examination even looking to the watch of the Court. There are discrepancies in the statement of these two witnesses regarding the place of occurrence, whether it happened inside the room or in the Verandah or in

the courtyard. It is further stated that no other witness came and supported the occurrence.

9. It is a settled principle of law that while considering the evidence of child witnesses, the only fact is to be considered is to see whether the same is tutored. Since there is a possibility that the child can give statement on the being dictated by their guardians. there it is necessary to see whether the statements are tutored, where there is no such evidence then there is no reason why the evidence of these witnesses cannot be believed. On the other hands it is expected that the, children are more truthful witnesses. The informant (P.W. 8) has stated both in the F.I.R. and also in his evidence that the accused persons committed murder of his wife suspecting her to be a witch. P.W. 8 has also stated in his cross-examination that a day before the occurrence, the accused persons had threatened his wife of dire consequences, stating that she practices in witch craft. However, he accepted that he did not inform this fact to the Sarpanch or any other person. In his cross-examination P.W. 8 has also stated that before the occurrence accused appellant Chakru Oraon was in talking terms with his wife and also in visiting terms in his house. Their relation earlier was good. From the statement of the informant, therefore, it appears that there was no quarrel with the informant and the accused appellant. Thus the claim of the accused appellant that he has been falsely implicated in this case, does not appear to be convincing. In that view of the matter the possibility of tutoring the child witnesses by their rather also appears too remote and if that aspect of the fact is discarded in that case there is no reasonable explanation as to why these child witnesses were not be relied, on the other hand their evidence shows their truthfulness. If the child witnesses narrate the story of one or two years back in detail and corroborate each other in a parrot like manner that will raise suspicion that the said child has been tutored. It is quite natural that the children could retain facts in their memory and vivid description of the occurrence. So the substance of their statement should be taken into account and in that view of the matter both these children (witnesses) have clearly stated that the accused appellant alongwith one Bhudhuwa Oraon committed murder of their mother.

10. In his cross-examination P.W. 2 has clearly stated that in response to the alarm raised by their mother, no body came. He has also stated that Chaukidar was not informed as he also went to the Mines. In that view of the matter, I do not find any such inconsistency or fact by which it can be presumed that these child witnesses (P.W. and P.W. 5) can be said to have been tutored.

11. The only other alleged eye witness i.e. P.W. 4 has of course not supported the prosecution case, but he has supported this much that he had heard hulla of Hiramani Oraon (deceased) and cry for help. He went to the house of Hiramani but he did not see anything. Thus, though this witness has fully accepted the occurrence but surprisingly enough has not stated as to why Hiramani was crying for help. There should be some reason for such alarm and thus the lady must be in trouble. But he does not say so. In his cross-examination attention was drawn by the prosecution towards his earlier statement, which he gave before the Magistrate under Section 164 Cr. P.C, wherein he had stated that he found Chakru Oraon and Bhudhuwa Oraon assaulting the wife of Harinath Oraon with fire wood repeatedly but he denied the same. P.W. 7 is the Judicial Magistrate, who recorded the statement of this witness under Section 164 Cr. P.C. on oath. The statement of this witness has been marked as Ext. 4 and it shows that the facts denied by this witness in his deposition during trial was accepted in his earlier statement recorded under Section 164, Cr. P.C. There is no reason as to why the Magistrate will be disbelieved. It is true that this statement under Section 164, Cr. P.C. of this witness cannot be taken as a substantive evidence but it contradicts the statement of this witness before the trial Court Thus evidence of the aforesaid two child witnesses i.e. P.W. 2 and P.W. 5, who are the eye witnesses of the occurrence also finds supports from the statement of this witness inasmuch as he also came at the time of occurrence and heard cry of their mother.

12. P.W. 8 the informant has also fully corroborated his statement given in the fardbeyan (Ext. 7/1) that he heard about the entire occurrence from his two children, wherein they stated that the accused appellant Chakru Oraon alongwith one Budhuwa committed murder of their mother. He also saw the dead body and corroborated the fact that he had given his statement before the police which was recorded and read over to him and finding it true, he signed on the same. He

proved Ext. 7, i.e. his signature on the fardbeyan. He has also proved Ext. 7/1 i.e. the fardbeyan recorded by the A.S.I. Shyamnandan Sharma. He has also proved the signature of Bhaiya Ram Oraon on the fardbeyan as witness, which is marked as Ext. 7/2. There is nothing in his evidence on the basis of which it can be concluded that there was any motive for him for falsely implicating this accused appellant and Bhudhuwa Oraon.

13. P.W. 1 is the Doctor, who conducted autopsy on the dead body. He has stated that on 28.4.1989 at about 1.00 P.M. he had held autopsy on the dead body of Hiramani Orain, wife of Harinath Oraon of village Bagru Bauditoli, P.S. Kisko, district Lohardaga and found the following injuries:

A. External injuries:

(i) a lacerated wound on the left side of forehead of size 3 'x2' x brain tissues deep. Fracture of frontal bone

(ii) lacerated wound on the occipital region of the scalp of the size 3 'x2' x bone deep.

(iii) fracture of cervical vertebrae.

(iv) a chop wound on the right side of neck size 2 'x1/4' x muscle deep.

(v) a chop wound on the mid of the left side of neck of the size 2 'x1/4' muscle deep.

(vi) chop wound on the left side of neck just below left ear of the size 1.5 'x1/4' x muscle deep, left ear lobe cut off.

B. Internal Examination:

Fracture of frontal bone, scalp, meninges and brain tissues pale, chest, heart, left and right chamber empty, lungs pale, Abdomen, stomach contained about 300 m.l. semi-digested food material. Liver pale, spleen pale, kidney pale, Uterus - none pregnant. Urinary bladder contains about 100ml. of urine.

P.W. 1 has further stated that all the above injuries were antemortem in nature caused by heavy and sharp cutting weapon. Time elapsed since death 24 to 36 hours. He has clearly stated that these injuries were sufficient in the ordinary course of nature to cause death. He has also stated that lacerated wounds were caused by hard and blunt substance and chopped wound were caused by heavy and sharp cutting like axe. He has proved Ext. 1, i.e. the postmortem report. He has also stated that the death was not caused due to any particular injuries but it was due to cumulative effect of all the injuries. The aforesaid evidence of P.W. 1 also fully corroborates the prosecution case that the death was caused by both hard and blunt substance and that of heavy and sharp cutting weapon and the death was as a result of cumulative effect of all the injuries. Thus even if this accused appellant is said to be armed with fire wood at the time of occurrence and assaulted with the same, he is also equally responsible for the death of the deceased to that of the other person, who is said to be armed with Tangi like heavy and sharp cutting weapon.

14. P.W. 9, the I.O. has stated that on 27.4.1989 he was posted at Kisko police station as A.S.I, on that day he got rumour that a murder has been committed in Bagru area, so he recorded station diary Entry and left for that place. He took the statement of the informant on the place of occurrence and has identified Ext. 7/1 i.e. the fardbeyan recorded by him. He has also proved Ext. 7/3 i.e. his endorsement on the fardbeyan to the police station for instituting an F.I.R. Ext. 7/4 is the endorsement of the O.C.. He has also loitered Ext. 8. This witness has also stated that he prepared inquest report through carbon process. He has proved the inquest report, which is marked as Ext. 3/1. He has also stated that he sent the dead body for postmortem examination. He also seized a blood stain Tangi and a piece of wood from the place of occurrence and prepared a seizure list in presence of the witnesses in carbon process, in which Bhujua Oraon has given his L.T.I, and Santosh Gope has signed. He has proved Ext. 2/1 i.e. carbon copy of the seizure list. He has also stated that he has forwarded those articles to the Forensic Science Laboratory, Bihar Patna, through C.J.M., Sri Marget Kindo and he has proved the said letter and after completing the investigation he had submitted charge sheet.

15. learned Counsel for the accused-appellant submitted that the evidence of this I.O. (P.W. 9) cannot be considered in view of the fact that this accused-appellant has not been given any opportunity to cross-examine him. It is further submitted that this accused-appellant has thus been prejudiced for not getting opportunity or cross-examination of this Investigating Officer.

16. In the facts and circumstances of this case, I am unable to accept the aforesaid submissions of the learned Counsel for the accused-appellant. There is no such fact which the defence could have taken through this Investigating Officer. There is nothing to show that even if the evidence of this I.O. is discarded the case of the prosecution is affected in anyway. It is an established principle of law that even in cases where the I.O. was not examined, the only fact for consideration is that how the accused appellant has been prejudiced. In that view of the matter, there is no merit in the submissions of the learned Counsel appearing for the defence in this Court.

17. Mr. Lal also submits that it is clear from the evidence of the Investigating Officer that he had recorded the station diary Entry while proceeding for the place of occurrence. According to Mr. Lal this station Diary Entry should be treated as F.I.R. and non-examination of this could be fatal for the prosecution case. It is an established principle of law that if the earlier statement is cryptic and does not state about the occurrence in that case the non-production of that paper will hit the prosecution case very little. Admittedly, neither the informant nor his sons, who are the eye witnesses of the case or any other persons of that village, who can be treated as neighbourers went to the police station. The police had heard a rumour and so that statement can not be taken in anyway as a statement of the occurrence.

18. The aforesaid fact leads to the conclusion that the learned Lower Court has appreciated the facts and evidence on records and came to a correct finding on the conviction and sentence of the accused appellant and the impugned judgment does not require any interference by this Court. Accordingly, the impugned judgment and order of conviction and sentence against the accused application dated 1.9.1993 passed by Shri Lakhan Kumar Sahay, Additional Judicial

Commissioner, Lohardaga in S.T. No. 413/89/10/90 is hereby confirmed.

19. In the result, this appeal fails and is hereby dismissed. It appears that the accused-appellant is on bail, hence his bail bond is cancelled and he is directed to surrender before the Court below forthwith to service out his remaining sentence, failing which the Court below will take necessary steps for securing his attendance, for serving the sentence.

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