

Augustine Oraon and Ors Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Feb-12-2015

Appellant : Augustine Oraon and Ors

Respondent : State of Jharkhand

Judgement :

Criminal Appeal (D.B) No.1542 of 2004 With Criminal Appeal (D.B) No.1696 of 2004 Against the judgment of conviction dated 13.8.2004 and order of sentence dated 16.8.2004 passed by the Additional District and Sessions Judge, FTC No.II, Gumla in S.T.No.108 of 2001. ----- 1. Augustine Oraon 2. Anil Oraon 3. Dhondhe Oraon 4. Ede Oraon @ Nanka Oraon.Appellants[Cr.App.(D.B) No.1542 of 2004] Ram Oraon, son of Jeeta Oraon, resident of village Belagarha, P.S.Ghaghra, Dist-Gumla.Appellant [Cr. App. (D.B) No.1696 of 2004] -V E R S U S- The State of JharkhandRespondent (in both the cases) For the Appellants: M/s.A.K.Kashuap, Sr. Advocate and Leena Shakti, Advocate For the State : Mr.Hardeo Prasad Singh, A.P.P P R E S E N T THE HONBLE MR.JUSTICE R. R. PRASAD THE HONBLE MR.JUSTICE RAVI NATH VERMA By Court: Both the appeals arising out of the same judgment were heard together and are being disposed of by this common judgment.

2. These two appeals are directed against the judgment of conviction dated 13.8.2004 and order of sentence dated 16.8.2004 passed by the Additional District and Sessions Judge, F.T.C.No.II, Gumla in S.T.No.108 of 2001 whereby and whereunder the court having found the appellants guilty for committing murder of

12 years old girl, Munni Kumari after committing gang rape upon her and for also committing murder of Basant Oraon convicted them for the offence punishable under Section 376(2)(g) and 302/34 and also 201/34 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302/34 of the Indian Penal Code and further to undergo rigorous imprisonment for ten years with a fine of Rs.10,000/- for the offence punishable under Section 376(2) (g) and further for five years for the offence punishable under Section 201/34 of the Indian Penal Code with default clause.

3. The case which the prosecution initially made out is that Basant Oraon, aged about 18 years, Munni Kumari, aged about 12 years and Munna Oraon (P.W.8), aged about 7 years, sons and daughter of the informant, Jagarnath Ram (P.W.13) had gone in the night of 17.11.2000 to the field for keeping watch over the paddy. They slept in the night over the Machan. Early morning at 5 A.M. on 18.11.2000, Munna Oraon came home and informed to the father, Jagarnath Ram (P.W.13) and also to the mother, Nilmani Devi (P.W.7) that some miscreants have killed Basant Oraon and Munni Kumari. On getting this information, the informant (P.W.13) came to the field along with his wife, Nilmani Devi (P.W.7) and sister-in-law (Bhabhi) where villagers also reached. They during search found blood mark near a well and hence, suspected that the dead bodies may have been drowned in the well. Upon search being made, they were able to recover the dead body of Basant Oraon but did not find the dead body of the daughter Munni Kumari. In course of further search, they found an under pant of Munni Kumari near a well belonging to Baila Oraon. There they also found blood mark over the well. When search was made, dead body of Munni Kumari was found which was taken out. They suspected that miscreants before committing murder must have committed rape upon her. Thereafter, the informant went to Ghaghra Police Station and gave his Fardbeyan which was recorded by Officer-in-Charge, Pramod Ranjan (P.W.16). While giving fardbeyan about the incident stated above, they suspected hands of these appellants Augustine Oraon, Anil Oraon and Dhondhe Oraon and also suspected the hands of Ram Oraon and Ede Oraon @ Nanka Oraon, co-villagers.

4. On the basis of fardbeyan, a formal F.I.R (Ext.5) was drawn against three appellants, Augustine Oraon, Anil Oraon and Dhondhe Oraon. The Investigating Officer (P.W.16) took up the investigation and came to the place of occurrence where the Investigating Officer held inquest report on the dead body of Basant Oraon and Munni Kumari and prepared inquest report (Ext.7 and 7/1). The Investigating Officer also did find mark of blood over the well and also found underpant of the deceased (Munni Kumari). It was seized under seizure list (Ext.6). Thereupon dead bodies were sent for post mortem examination which was conducted by Dr.A.D.N.Prasad (P.W.11). The Doctor upon holding autopsy on the dead body of Basant Oraon found the following injuries.

1. One oval bruise on the chin x 2. Multiple bruise in front of neck and on right side of neck 5 x 1/2 with abrasion in the lower aspect of the chin.

3. Depressed fracture of the right temporo parietal region of the skull with large amount of haemotoma inside cranium.

4. Bruise over the left hypochondrium 2 x 1. Doctor issued post mortem examination report (Ext.4) with an opinion that cause of death was head injury due to injury no.3. On the same day, he also held autopsy on the dead body of Munni Kumari, aged about 12 years and found the following injuries.

1. Lacerated injuries over the right zygomatic region 1 x 1 x 1/2

2. Multiple ribs broken on the right side of chest with laceration of right lung and haemothorax present on right side. The sternum was also broken.

3. Sharp cutting wound over the left zygomatic region 2 x 1 x 1/2 with the fracture of left zygomatic bone.

4. Bruise on the medial aspect of right thigh 1 x 1 with bleeding from vagina. The hymen was lacerated and both vulva were swollen. The inside of vagina was extensively lacerated and no seminal discharge present inside the vagina.

5. Doctor issued post mortem examination report (Ext.4/1) with an opinion that cause of death was due to combined effect of injury no.2 and 4. Further it has

been opined that injury no.4 might be possible if any person forcibly attempt for rape.

6. In course of investigation, the Investigating Officer recorded the statement of Munna Oraon (P.W.8) on 22.11.2000 whereby he had stated before the police that while they were sleeping, the appellants came and made them to wake up by giving blows by lathi. Thereupon the appellants took away his brother, Basant Oraon and put him in a well and before that, his brother had been assaulted by the appellant Ede Oraon while the appellant Ram Oraon had caught hold of him. The sister was taken by the appellants, Dhondhe Oraon and Augustine Oraon and put her in a well. The Investigating Officer also recorded the statement of number of villagers, who had gone along with the informant and his wife to the wells from where the dead bodies had been recovered.

7. After completion of investigation, charge sheet was submitted against the appellants, upon which cognizance of the offence was taken and when the case was committed to the court of sessions, charges were framed to which the appellants pleaded not guilty.

8. During trial, the prosecution examined altogether 16 witnesses. Of them, P.W.1, Baila Oraon, P.W.2, Chowtha Oraon, P.W.4, Alok Oraon, P.W.5, Jagadish Oraon, P.W.6, Bishwanath Mahto, P.W.12, Etwa Oraon are all villagers who had accompanied the informant P.W.13 to the wells from where dead bodies had been recovered. P.W.3, Etwari Devi, grand-mother of the deceased who had came to know about the occurrence from the informant. P.W.7, Nilmani Devi is the mother of the deceased who testified that her son P.W.8 in the morning disclosed that it was the appellants who had committed murder of Basant Oraon and Munni Kumari. P.W.8 is the sole eye witness. According to him, it was the appellants, who committed murder of both the persons. P.W.9, Anirudh Dushadh happens to be a Choukidar of the village whereas P.W.13, Jagarnath Ram is the informant, who in his testimony did testify that his son Munna Oraon (P.W.8) did disclose to them that it was the appellants, who had committed murder of both the persons.

9. After closure of the prosecution case, all the incriminating materials appearing against the appellants were put to the appellants under Section 313 of the Code of

Criminal Procedure.

10. The defence has examined D.W.1, Manu Lohra whose statement has been recorded by the police under Section 161 of the Code of Criminal Procedure but the prosecution did not prefer to examine him as a prosecution witness and in that event he was examined on behalf of the appellants as D.W.1. According to him, while he was sleeping, we woke up on hearing cry of a boy. He took the boy inside house. He won Munna Oraon (P.W.8) when he asked as to why he is crying, he disclosed that some miscreants are assaulting his brother and sister. When he asked about the names of the miscreants, he could only tell that number of persons were there. In the morning he brought the boy to his house.

11. The trial court having found P.W.8, an eye witness trustworthy, recorded the order of conviction and sentence.

12. Mr.A.K.Kashyap, learned Sr. counsel appearing for the appellants submitted that neither the eye witness P.W.8 nor the informant P.W.13 nor the mother of the deceased P.W.7 are worth reliable as P.W.8 at the very first occasion never seems to have disclosed the name of the assailants/miscreants which is evident from the fardbeyan of the informant where the appellants have never been alleged to have killed both the deceased but only after five days of the occurrence, P.W.8 made statement under Section 161 of the Code of Criminal Procedure, where name of these appellants got transpired wherein it was disclosed that it were the appellants who had committed murder of both the decease. That statement in the facts and circumstances of the case can certainly be taken to be after thought made to implicate the appellants as there was enmity in between the appellants and the informant.

13. Further it was submitted that the material which has come on the record does suggest that murder has been committed by some unknown persons, who on the fateful night had visited the village wearing boots, semblance of which fact gets transpired from the testimony of P.W.9, who has testified that in the night, some unknown persons have knocked the door. In such circumstance, one may certainly come to conclusion that the real culprits have been left out and these persons have been implicated falsely as the appellants were not having good relation with

informant. Under the circumstances, the trial court committed illegality in recording the order of conviction and sentence and hence, it is fit to be set aside.

14. As against this, learned counsel appearing for the State submitted that P.W.8, an eye witness though at the first occasion does not seem to have disclosed names of these appellants but there had been reason for not disclosing the names as he having seen the occurrence was quite fearful and when came out of the trauma he was able to diverge names of these appellants as the persons who committed offence and thereby there has been no reason to discard the testimony of eye witness, P.W.8.

15. Having heard and on perusal of the record, we do find that most important witness is the P.W.8, Munna Oraon, who as per his evidence was sleeping in the field over the Machan along with his brother Basant Oraon (deceased) and sister Munni Kumari (deceased) on the fateful day. In the night while they were sleeping, the appellants came over there and made them to wake up by assaulting them with lathi. When his brother Basant Oraon and sister Munni Kumari woke up, his brother was caught hold of by Anil Oraon and then appellant Ede assaulted him. Thereupon both of them took him away and then put him on the well. He has further testified that his sister was taken forcibly by the appellants Dhondhe Oraon and Augustine Oraon. Thereupon he came to the house of Manu Lohra (D.W.1) to whom he told about the name of these appellants, who had taken his brother and sister and killed them. In the morning he came to his house and informed about the occurrence to his father (P.W.13) and also his mother (P.W.7). Accordingly, P.W.13 the informant testified that his son Munna Oraon, P.W.8 in the morning had disclosed that while they were sleeping, the appellants came and assaulted his brother and sister and then took them away and killed them. Thus, it appears that P.W.8 has claimed that he saw these appellants taking away his brother, Basant Oraon and sister, Munni Kumari and killed them but his assertion gets falsified from that fact that he never disclosed the name of the appellants to his father in the next morning as P.W.13 in his fardbeyan has never stated that his son, Munna Oraon, P.W.8 had disclosed that it was the appellants who killed his son and daughter. This fact has been admitted even by P.W.7 in her cross-examination that when in the morning his son, P.W.8 came home, he did not

disclose the name of the appellants as assailant. Furthermore, P.W.8 who after the occurrence came to Manu Oraon, D.W.1 disclosed him about the killing of his brother and sister but he never disclosed to him that it were the appellants who had killed them which fact is evident from the evidence of D.W.1 who has testified that P.W.8 had never disclosed the name of the assailant to him.

16. Under the circumstances, none of the witnesses nor P.W.8, P.W.7 or P.W.13 are trustworthy. On the other hand, innocence of the appellants appear from the conduct as after the occurrence, the appellants have always been with the witnesses when the informant and other villagers had come in search of the dead bodies. Not only that when after recovery of the dead bodies, the informant came to the police station, the appellants were also there and even they had gone to the hospital when the dead bodies were taken for post mortem examination which fact is evident from the evidence of P.W.8 Choukidar and P.W.9.

17. Under the circumstances, we do find that the trial court committed illegality in convicting and sentencing the appellants for the offence punishable under Sections 376(2)(g) and 302/34 and also 201/34 of the Indian Penal Code. Accordingly, the judgment of conviction and order of sentence is hereby set aside. The appellants are acquitted of all the charges. Consequently, the appellants be released forthwith if not wanted in any other case. The appellant in Cr. App. (D.B) No.1696 of 2004 is on bail and hence, he is discharged from the liability of bail bond 16. Thus, these two appeals stand allowed. (R.R.Prasad, J.) (Ravi Nath Verma, J.) Jharkhand High Court, Ranchi The 12th February, 2015 NAFR/N.Dev

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