

Krishna Oraon Vs. State of Jharkhand

Krishna Oraon Vs. State of Jharkhand

SooperKanoon Citation : sooperkanoon.com/48986

Court : Jharkhand

Decided On : Mar-11-2015

Appellant : Krishna Oraon

Respondent : State of Jharkhand

Judgement :

1 Cr. (Jail) Appeal (DB) No. 1112 of 2005 Against the judgment and order of conviction and sentence dated 5.7.2005 and 12.7.2005 respectively passed by Sri Ramesh Kumar Srivastava, Addl. Sessions Judge, FTC No.1, Gumla, in Sessions Trial No. 245 of 2003 . _____ Krishna Oraon, son of Liba Oraon, resident of vilage Fulwartoli, Police Station Gumla, Dist. Gumla Appellant Versus State of Jharkhand ... Respondent For the appellant (s): Mr. A.K.Chaturvedi For the respondent State : Mr. Shekhar Sinha, Addl P.P. PRSENT HONBLE MR. JUSTICE R. R. PRASAD HONBLE MR. JUSTICE RAVI NATH VERMA By Court : This appeal is directed against the judgment of conviction dated 5.7.2005 and order of sentence dated 12.7.2005 passed by the 1st Additional Sessions Judge, Gumla, in Sessions Trial No. 245 of 2003 whereby and whereunder the court having found the appellant guilty of committing murder of Aiju Beck and also for causing murderous attempt on the wife of the deceased as well as house trespass recorded the order of conviction under sections 302/34, 307, 324 and 452 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and to pay fine of rupees ten thousand to be paid to Filiziri Beck, the wife of the deceased, with a default clause for the offence under section 302 of the Indian

Penal Code and further to undergo rigorous imprisonment for ten years for the offences punishable under section 307 of the Indian Penal Code. No separate sentence was passed for the offence punishable under sections 324 and 452 of the Indian Penal Code. 2 2 The case of the prosecution, as has been projected, is that one Raju Oraon, the younger brother of the appellant, had previously asked for money from the informant Subhash Beck (PW1) for purchasing wine, but when the informant refused to oblige him, he was inflicted with injuries with a knife for which a case was lodged under sections 324/327 of the Indian Penal Code. The said accused Raju Oraon was arrested and was remanded to jail custody. Thereupon, the informant PW1 went to Chhatishgarh for pursuing his studies. He came home for deposing in the case the date of which had been fixed as 22.5.2002. The accused persons since last two dates were pressurizing them not to give evidence. When they did not accede to their request, the accused persons threatened them with dire consequences. 3 On 22.5.2002, the informant deposed in the case and came home. In the night, while his father, Aiju Beck, was taking rest in the courtyard after taking his meal and his mother, Filiziri Beck (PW4) was sitting near the door, one Surender Ram, all on a sudden, came and asked from his father about the whereabouts of Subhash Beck (PW1), upon which his father expressed his ignorance. Meanwhile, the appellant as well as Mangal Oraon came armed with tangi and Balua and all the three started assaulting his father over his neck, chest and shoulder. On Seeing this, his mother Filiziri Beck (PW4) ran towards inside the house, but the appellant came inside the room by chasing her and assaulted her with tangi at several parts of her body as a result of which she sustained number of injuries. While the father of the informant and mother were being assaulted by the accused persons, the informant (PW1) was taking meal at the kitchen from where he saw the accused persons assaulting both his father and the mother. Meanwhile, PW2 Suresh Beck and Santoshi Beck PW3, the brother and the 3 sister of the informant, who were over the roof also saw the accused persons assaulting the deceased as well as their mother. Thereupon, when information was received by the Sub Inspector of Police A.K. Khalko of Gumla P..S, he reached at the place of occurrence on the same night at about 10.00 p.m. and recorded the fard beyan (Ext. 1) of Subhash Beck(PW1) on the basis of which a formal FIR was drawn. Thereafter, the matter was taken up for

investigation. During investigation, the investigating officer held inquest on the dead body of the deceased and then sent the dead body for post mortem examination which was conducted by Dr. Nawal Kishore Sinha (PW6). On holding autopsy, the doctor did find the following injuries on the person of the deceased: (I) incised wound 10x3x5 on the back and lateral side of neck at the level of first cervical vertebra cutting skin, all the muscles of neck, great vessels of both sides of the neck, 1st cervical vertebra and the brain stems ; (II) incised wound (i) 3x3x (ii) 6x 2x both around hand on left shoulder region; (III) incised wound (I) 4x2x2 (ii) 4x2x both cut upper lip and left auxiliary region; (IV) incised wound 1x1x on the left hand . 4 The doctor issued post mortem examination report (Ext. 3) with an opinion that the death of the deceased was caused due to cut of brain stems and great vessels of the neck caused by sharp cutting weapon like tangi and balua. At the same time, Filiziri Beck PW4, the mother of the informant, was also examined by Dr. Manwendra Kumar Singh (PW5) who found following injuries on her person :

4. (I) Incised wound on lateral border of right hand from first interphalangeal joint of little finger size about 4 x 1 x bone deep. (II) Incised wound on left forearm 3 x 1 x muscle deep. (III) Incised wound on left palm 4 x 1/2 x 1/4. (IV) Incised wound on right hand between thumb and index finger 1 X12 x 1/4. (V) Incised wound on right elbow posteriorly 4 x 1/2 x muscle deep. (VI) Incised wound on the middle of right fore-arm 1 x 1/2 x muscle deep. (VII) Incised wound above injury no. (vi) i.e. middle of right fore-arm 4 x 1/2 x 1/2. (VIII) Incised wound on right side of face as covered area 3x 1/4 x 4. (IX) Incised wound below the lateral end of right-eye size 3/4x 1/4 x 1/4. (X) Incised wound on the right pinna at the lower lobe 1/2 X14 x 1/8. (XI) Abrasion under the chin towards right side 3x 1/8. (XII) Abrasion over right neck 3 x 1/4. The doctor issued an injury report with an opinion that injury no. 11 and 12 were caused by hard and blunt substance, whereas injury no. 1 was grievous in nature and other injuries were simple in nature. 5 After completion of the investigation, the investigating officer submitted charge sheet against the appellant showing two of the accused as absconders, upon which cognizance of the offence was taken and when the case was committed to the court of sessions, the appellant was put on trial during which the prosecution examined altogether six witnesses. Of them Pws. 1,(informant) PW2 Suresh Beck, brother of the informant;

PW3 Santoshi Beck (sister of the informant); Filiziri Beck (PW4) mother of the 5 informant are the eye witnesses who had occasion to see the occurrence from difference places of the house. PW1, the informant, claims to have seen the occurrence while taking meal in the kitchen, where as Pws. 2 and 3 saw the occurrence while they were on the roof of the house. PW4 (mother) is an injured witness. 6 The trial court placing reliance on the testimonies of all the four eye-witnesses getting corroboration from the medical evidence, recorded the order of conviction and sentence against the appellant which is under challenge in this appeal. 7 Mr. A.K. Chaturvedi, learned counsel appearing for the appellant submits that admittedly PW1, the informant, was inside the kitchen and hence he could not have had any occasion to see the occurrence which took place in the courtyard of the house. Similar is the situation with respect to PWs 2 and 3 who claimed to be there on the roof of the house at the time of the occurrence, but from there it would not have been possible for them to see anything which occurred in the courtyard, that too at 8.30 p.m and, therefore, none of these Pws 1, 2 and 3 appears to be credible. Their credibility further gets shaken from the fact that they did depose that each of the accused persons, three in number, had assaulted the deceased once, but there are four injuries on the person of the deceased which do suggest that they would not have seen the occurrence. 8 As against this, learned counsel for the State submits that all the four witnesses are witnesses to the occurrence and their evidences are quite consistent. There has been no inconsistency even slightly so as to discard the testimonies of these witnesses. It was further submitted that it is true that the time of occurrence was about 8.30 p.m, but, according to the witnesses, it was a moonlit night and in that event, there would not have been any difficulty on the part of the witnesses to identify the accused persons as they 6 were quite known to them since long. It was further submitted that motive has also been proved and thereby the trial court is absolutely justified in recording the order of conviction and sentence against the appellant. 9 We have already noticed that while the witnesses Pws 1,2,3 and 4 were in their house, the deceased was taking rest in his courtyard while PW4, the wife of the deceased was sitting in front of the house. At that point of time, one Surendra Beck came in search of Subhash Beck (PW1) and when he asked about the whereabouts of Subhash Beck from the deceased, the deceased expressed his

ignorance. Immediately thereafter, this appellant as well as Mangal Oraon came armed with tangi and balua who along with Surender Beck assaulted the deceased. Seeing all these, when PW4 ran back to her room, she was chased by the appellant and he came near the room and assaulted her with tangi causing several injuries. According to PW1, he was inside the kitchen and taking meal while the deceased and PW4 were being assaulted. From there, he saw the occurrence from the space which was there in between the two walls. Similarly, PWs 2 and 3 who were on the roof at the time of the occurrence did see the appellant assaulting the deceased and PW4 from the roof and they identified the appellant and others as it was a moonlit night. The testimonies of all the three PWs are consistent with each other and also with the evidence of the injured witness (PW4) who has also testified in the same manner as has been testified by other three witnesses. He has gone to testify that while she was coming inside the room after seeing the occurrence, the appellant came by chasing her and assaulted her at several places and went on assaulting her up to the kitchen which does suggest that she was inflicted with number of injuries which find support from the injury report, as the doctor has found as many as 12 injuries on her person. The testimonies of these four witnesses get 7 corroboration from the medical evidence, as the doctor has found four injuries over the neck and around the shoulder of the deceased . However, according to the learned counsel for the appellant, there should have been only three injuries on the person of the deceased, as all the witnesses have testified that each of the accused including the appellant, three in number, had given single blow to the deceased and thereby there should have been only three injuries, whereas the medical evidence does suggest that four injuries were there on the person of the deceased. It is true that four injuries are there, three in the region of neck or shoulder whereas the fourth injury seems to be over his hand, which the deceased may have received while trying to save himself. Under the circumstances, we do not subscribe the view that the oral testimonies do not get corroboration from the medical evidence. Thus, there does not appear to be any doubt over the trust-worthiness of all the four witnesses. 10 Accordingly, we do not find any illegality in the order whereby the appellant has been convicted under sections 302/34 of the Indian Penal Code, but the conviction recorded under section 307 of the Indian Penal Code does not

appear to be justified as the appellant, though has inflicted as many as 12 injuries on the person of PW4, but none of the injuries is on her vital part. Further more, according to the doctor, injuries are simple in nature, except injury no. (i) which has been opined as grievous injury, but that also does not appear to be grievous in nature keeping in view the provision of Section 320 of the Indian Penal Code. Under the circumstances, that part of the judgment and order of sentence whereby and whereunder the appellant has been convicted and sentenced for the offence punishable under section 307 of the Indian Penal Code is hereby set aside. So far as the other part of the judgment whereby the appellant has been convicted and sentenced for 8 the offences punishable under sections 302/34, 324, 452 of the Indian Penal Code is hereby affirmed. Thus, with the modification in the judgment of conviction and order of sentence, as indicated above, this appeal stands dismissed. (R. R. Prasad, J.

) (R. N. Verma, J.

) Jharkhand High Court, Ranchi, dated :

11. 03.2015 Ambastha/Smita/NAFR

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com