

Lobin Marandi Vs. State of Jharkhand

Lobin Marandi Vs. State of Jharkhand

SooperKanoon Citation : sooperkanoon.com/50145

Court : Jharkhand

Decided On : Mar-27-2015

Appellant : Lobin Marandi

Respondent : State of Jharkhand

Judgement :

Cr. Appeal (DB) 968 of 2003 With Cr. Appeal (DB) 1071 of 2003 ---- Against the judgment of conviction dated 25.04.2003 and order of sentence dated 29.04 2003 passed by the 1st Additional Sessions Judge, Pakur in Sessions Case No.126 of 2001. ---- 1. Birju Besra, son of Jetha Besra 2. Herosil Besra son of Jetha Besra 3. Masang Besra, son of Birju Besra 4. Rasid Besra son of Birju Besra All resident of village Bohra, P.S. Amrapara, District Pakur (Jharkhand) .Appellants in Cr. Appeal No.968/2003 Lobin Marandi, son of Late Bala Marandi, resident of village Bohra,P.S. Amrapara, District Pakur. .Appellant in Cr. Appeal No.1071/2003 - Versus- State of Jharkhand Respondent in both the cases. ---- CORAM : HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HONBLE MR. JUSTICE APARESH KUMAR SINGH ---- For the Appellants :M/s. Rajeev Sharma, Sr. Advocate, Manoj Kumar & Neetu Singh For the Respondent :Mr. Pankaj Kumar, APP ---- Dated 27th March, 2015 Per: Aparesh Kumar Singh,J.

--- Altogether 8 accused including the 5 appellants herein in the aforesaid two connected appeals, were sent up for trial in connection with Amrapara P.S.Case No.13/2001 under Sections 341,302/34 and 120B IPC. 3 accused were acquitted of the charges but the learned trial court by the same impugned judgment of

conviction dated 25.04.2003 and order of sentence dated 29.04 2003 passed in Sessions Case No.126/2001 held the aforesaid 5 appellants guilty of the charges under Sections 302/34 and 341 IPC and sentenced them to undergo life imprisonment for the offence under Sections 302/34 IPC, while no separate sentence has been awarded for the charges under Section 341 IPC. However, the learned trial court acquitted the aforesaid appellants of the charges under Section 120B IPC.

2. The FIR in the instant case was recorded on the fard beyan of Devi Chand Soren, PW8 son of deceased Bhola Soren on 16.6.2001 at about 7.30 hours. As per the fard beyan the informant alleged that on 16.6.2001 at about two o'clock his father had gone to the house of his sister Memsari Soren, who 2. was married in the same village. The deceased was talking with his sister and other family members on the doorsteps when at about 4 PM in the evening Moti Marandi and Bhairo Besra came and asked the deceased that he should come along to the house of village Pradhan Surendra Marandi for some discussion for a panchayati in respect of a disputed piece of land between Manjhi Marandi and Durga Tudu. Though his father was not willing to go, at their repeated insistence, he went there. After panchayati was over his father was returning with Moti Marandi, Bhairo Besra and Rasid Marandi and as soon as he reached near the house of Durga Tudu, suddenly Lobin Marandi came in front armed with bow and arrows and told the deceased to standstill. In the meantime accused Birju Besra armed with axe, Herosil Besra, Rasid Besra and Masang Besra armed with Dab suddenly appeared and along with them Moti Marandi and Bhairo Besra surrounded him and assaulted his father with respective arms held by them in a brutal manner, as a result of which he fell down. Treating him to be dead the accused persons fled away from the place of occurrence. Thereafter informant's brother-in-law, Rasid Marandi, his elder brother Budheshwar Marandi and others took the injured Bhola Soren in the house of Rasid Marandi. Thereafter on information the informant went there before whom the injured Bhola Soren and his brother-in-law and others disclosed the name of the accused persons. However, due to lack of means his father could not be taken for treatment and at 1 PM his father died as a result of the injuries sustained. According to the informant the cause of incidence is a land dispute going on between Bhola Soren and the accused persons due to which

Samual Baski, Basant Baski, David Besra and Libyanush Besra were threatening Bhola Soren to kill him. They were also in league with Moti Marandi and Bhairo Besra since past few days. The investigation commenced on institution of FIR and a chargesheet was submitted against the accused persons whereupon cognizance was taken by the learned ACJM, Pakur under Sections 302/34, 341 and 120B IPC. Thereafter the case was committed to the court of sessions after supply of police papers. Charges were framed under Sections 302/34, 341 and 120B IPC3 against the accused persons to which they pleaded not guilty and claimed to be tried. They also denied to have committed the offence in course of their examination under Section 313 Cr.P.C.

3. The prosecution in order to substantiate its case examined altogether nine witnesses. Post mortem report was proved by Dr. Binay Kumar, PW9as Ext.2 and the signature on the fard beyan was proved as Ext.1 by the informant , PW8 Out of nine prosecution witnesses PW2 Fillip Tudu, PW3 Budhshwar Marandi, PW4 Lotu Marandi and PW6Marang Tudu were declared hostile.

4. PW1 Rasid Marandi is the brother-in-law of the informant, who is said to be the eye witness of the occurrence. He has stated in his examination that while deceased Bhola Soren, Bhairo Besra and Moti Marandi along with him were returning to their house after the Panchayati on the said date and when they reached near the house of Durga Tudu, Lobin Marandi came in front of Bhola Soren with bow and arrows , Birju Besra holding axe , Herosil Besra, Masang Besra and Rasid Besra were holding Dabs. All of them started assaulting Bhola Soren. He further stated that Moti Marandi and Bhairo Besra ran away and upon halla raised by him people from surroundings came running. However, the accused treating the injured Bhola Soren to be dead, ran away. He stated that he identified the accused persons in the light of torch . He further stated that when the villagers rushed there the injured Bhola Soren disclosed to them that Birju Besra, Herosil Besra, Masang Besra and Rasid Besra had assaulted him. He has further stated that injured Bhola Soren was brought to his house with the help of his father Satan Marandi and elder brother Budheshwar Marandi but despite their efforts he could not be saved and injured Bhola Soren died at about 1 in the night. In his cross examination he has stated that when the informant Devi Chand Soren was

giving his fard beyan before the officer Incharge he was not there and had taken the dead body for post mortem. He has repeated his statements in his cross examination that he ran away after seeing the five accused surrounding Bhola Soren and assaulting him. After he made hulla the accused persons ran 4. away. He has further stated that his father-in-law fell unconscious for two minutes and thereafter he regained consciousness and when the villagers came he narrated the names of the accused persons. He thereafter did not fell unconscious and was taken to his house on a cot. He has further stated that he has given the information to the police station and has also disclosed the names of the accused persons, which the officer Incharge took down and he also put his signature thereupon. The Officer Incharge had come to the place of occurrence and sent him along with Choukidar Matal Murmu for post mortem after giving him a paper relating to the deceased. He further stated that he had informed the family members of Bhola Soren only after body was lifted for post mortem and by that time Bhola Soren had not died. This PW1Rasid Marandi, his father and his brother and Manjhi Soren were on his side. He has denied that he had any share in the property of Bhola Soren or was asking for any such share. He also denied his involvement in the offence and that he had falsely implicated the aforesaid accused persons.

5. PW5and PW7are hearsay witnesses and their statements are not of much consequence. However, PW8 the informant Devi Chand Soren has stated that he was informed at about 8 PM on 16.6.2001 by Bablu Tudu, Budheshwar Marandi and Srijal Marandi that his father has been assaulted and injured at Pradhan Tola. He along with his brother Shibu Soren and mother went there and saw his father lying in injured condition and several persons had gathered . He has further stated that on being asked his father told him that after attending the panchayati he along with Moti Marandi, Bhairo Marandi and Rasid Marandi were going to the house of PW1Rasid Marandi. When he reached near the house of Durga Tudu at Pradhan Tola, Lobin Marandi surrounded him and Birju Besra, Herosil Besra, Masang Besra, Rasid Besra , Moti Marandi and Bhairo Marandi all armed with bow and arrows, Dab and axe assaulted him and when he fell down the accused treating him to be dead fled away. This witness has further stated that his father died at about 1 AM in the night and then he went to the police station to lodge the FIR. He

has identified his signature on the FIR as Ext.1.

5. 6. From his aforesaid deposition it, therefore, appears that he claims to have known about the occurrence from his father and was not an eye witness of the assault. He also stated that Moti Marandi and Bhairo Marandi had assaulted his father, which, however, again is a departure from the statement of PW1 who claims himself to be an eye witness.

7. In the back ground of these two material witnesses the evidence of Dr. Binay Kumar, PW9 is of real importance to judge the truthfulness of the entire prosecution story. PW9 has held the post mortem examination on the dead body of the deceased at 2.30 PM on 16.6.2001 and found the following ante mortem injuries on the dead body:

1. Incised wound 6x1x muscle deep on the right temporal region dividing the right external ear in the middle.

2. Incised wound 6x1x bone deep on the left side of the neck, left carotid artery and left carotid vein was completely cut and divided.

3. Incised wound 5x1x bone deep over right scapular region. Right scapula was fractured.

4. Incised wound 2x1x bone deep over back of the neck. On dissection he found both lungs, livers, both kidneys, spleen were found pale, both sides of hearts were empty, stomach contained liquid food material in small amount, large and small intestines contained foecal matter and gas, brain and meninges were pale, bladder contained small amount of urine. According to him, the cause of death was hemorrhage and shock resulting from injury no.2. i.e. cutting and dividing of left carotid artery and vein of the neck caused by sharp cutting weapon. According to him the death had occurred within 24 to 36 hours of the post mortem examination. He has identified the carbon copy of the post mortem report as Ext.2.

8. A minute scrutiny of the evidence of PW9 coupled with injuries found on the body of the deceased shows that injury no.2 was an incised wound 6x1 x bone deep on the left side of the neck. The injury no.2 further indicates that left carotid

artery and left carotid vein was completely cut and divided. Such an injury is sufficient to cause instantaneous death of a person as is vehemently also argued by the learned senior counsel appearing on behalf of the appellants. If the carotid artery and vein supplying blood to the brain and head was completely cut and divided, the entire blood supply to the brain was snapped instantaneously.

9. Chapter 28 on Regional Injuries of the Celebrated Text Book of Medical Jurisprudence and Toxicology by Modi deals with wounds in the large blood vessels such as carotid arteries and jugular veins of the neck. The relevant extracts of the opinion of the learned Author at Chapter 28 of 24th Edition 2011 on the aforesaid issue is being quoted hereunder: Neck- Decapitation suggests a homicidal nature of death except when this occurs due to certain machineries or over a railway track, when this may be accidental also. In both cases, there should be a relevant history and other consistent features. A forceful blow over the neck can cause a fracture of the larynx, involving thyroid cartilage and cricoid cartilage or rupture of the trachea to cause death either by spasm or oedema of glottis or by suffocation due to internal bleeding into the larynx or due to surgical emphysema. Neck structures like trachea, larynx, oesophagus and blood vessels may also be sometimes injured by therapeutic, investigative and other related actions like tracheotomy, intubation, angiography, catheterisation and traction. Sometimes there may be neck injury due to chiropractic manipulation of the neck. It may even cause a stroke. Wounds of the neck are mostly incised and rarely punctured. In India, they are more often homicidal than suicidal and sometimes accidental. They are usually instantly fatal, if the large blood vessels, such as the carotid arteries and jugular veins of the neck are cut, but this is not always so, as some cases have been recorded in which persons have run a certain distance after the carotid arteries as well as the internal jugular veins had been cut. Haemorrhage from the severance of a small vessel, such as the superior thyroid artery, may cause death, if immediate surgical aid is not available. Wounds of the larynx and trachea are not necessarily fatal, if the large blood vessels are not injured. They may, however, cause death by suffocation due to the flow of blood into the air-passages, though most of it is coughed up. They may also cause death by subsequent oedema or inflammation, blocking the air-passages or by pulmonary sepsis.

10. After such a serious injury, which in the opinion of the doctor was also the cause of death due to hemorrhage and shock, the injured could not 7. have survived from 8.30 PM to one O clock in the night as has been made out by PW1 Rasid Marandi, who claims to be the eye witness of the occurrence. The statement of PW1 that after the dead body was shifted for post mortem the informant and his family members were informed of the incidence also gives a fatal blow to the entire prosecution story built upon by the informant in his fard beyan that he was an eye witness to the oral dying declaration of his father after he reached the house of Rasid Marandi on his information and came to know of the entire occurrence through the mouth of his father Bhola Soren, who according to him, was alive at that point of time. The statement of PW1 otherwise is also leading to a grave doubt about the entire prosecution story as according to him he had informed the police and given the names of the accused persons with the choukidar of the village and thereafter also put his signature on the statements recorded by the Officer Incharge. His statement that the Officer Incharge sent him along with Choukidar Matali Murmu for post mortem examination of the deceased along with a paper thereafter also gives terrible blow to the story built upon by the informant that he was the first person who gave the information of the incidence to the police by way of fard beyan, which led to the institution of the instant FIR that is the foundation of the entire prosecution case.

11. Reappraisal of the testimony of PWs 1 and 8 in the light of the staring medical evidence gives a terrible blow to the entire substratum of the prosecution case and creates a serious doubt about the truthfulness of the statements made in the FIR and also the deposition made before the learned trial court by PW1 Rasid Marandi, who claims himself to be an eye witness as also that of the informant, PW8 that these accused persons had caused fatal injuries leading to the death of said Bhola Soren.

12. As an upshot of the aforesaid discussions, the net result now surfaces is that the very case of the prosecution, as set up, is shrouded under thick clouds of doubt to prove charge against any of the five accused beyond reasonable shadow of doubt. Therefore, we extend benefit of doubt towards all the accused and disturb their conviction and sentence, as recorded by the learned trial court.

8. 13. Resultantly, both the appeals on hand viz Cr.Appeal No.968/2003 and Cr.Appeal No.1071/2003 stand allowed. All the accused are acquitted of the charges framed against them.

14. Appellants-Birju Besra, Herosil Besra, Masang Besra and Rasid Besra are stated to be in custody for the last about 14 years, whereas appellant-Lobin Marandi was released on bail during the pendency of the appeal. Appellants Birju Besra, Herosil Besra, Masang Besra and Rasid Besra shall now be released forthwith in this case, if not required in any other case. Appellant-Lobin Marandi stands discharged of his bail bonds furnished during the pendency of the instant appeal.

15. Registry is directed to inform the concerned Jail Authorities of the outcome of the instant appeal. Learned trial court shall also be informed accordingly.

16. Lower Court record in original shall be remitted to the court concerned.
(Virender Singh, C.J.) (Aparesh Kumar Singh, J.

) Pandey

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