

Libnus Oraon Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jan-09-2003

Reported in : 2003(51)BLJR643; [2003(2)JCR332(Jhr)]

Judge : Vishnudeo Narayan and; Lakshman Uraon, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Crl. Appeal No. 269 of 2002

Appellant : Libnus Oraon

Respondent : State of Jharkhand

Advocate for Def. : C.J. Sahay, APP

Advocate for Pet/Ap. : Nilesh Kumar Sinha, Adv.

Disposition : Appeal allowed

Judgement :

Vishnudeo Narayan, J.

1. This criminal appeal has been preferred by the sole appellant named above against the impugned judgment dated 10.8.2001 passed in S.T. No. 18 of 1998 by Shri Hari Bhushan Prasad Sinha, 1st Additional Sessions Judge, Simdega, whereby and whereunder the appellant was found guilty for the offence punishable

under Section 302 of the Indian Penal Code and he was convicted and sentenced to undergo R.I. for life.

2. The prosecution case has arisen on the basis of the fardbeyan (Ext. 2) of PW 7, Junus Uraon, the husband of Imelda Orain, the deceased of this case recorded by S.I., Pradeep Kumar of Kurdeg P.S. on 16.9.1997 and 12.30 hours at the house of the informant in village Lukartoli Taiser regarding the occurrence which is said to have taken place between 16.00 hours to 22.00 hours on 14.9.1997 and formal FIR was drawn on that very day at 17.30 hours. The formal FIR and the fardbeyan has been received in the Court of A.C.J.M., Gumta on 17.9.1997.

3. The prosecution case, in brief, is that the informant had gone with his buffalo for grazing on 14.9.1997 where one boy of his village informed him at 16.30 hours on that day that the appellant had assaulted his wife Imelda Grain by stones and she has become injured and on this information the informant ran to his house and his wife aforesaid had told him that when she was coming after getting the cock out of her land, in the way the appellant felled her on the ground and started assaulting her by stones on her head and other parts of her body causing bleeding injuries and the appellant was also telling her at that time of the occurrence to stop cultivating his land. She has also stated that PW 2, Sibiria Uraon and PW 3, Berna Xess and several other persons came there and they saved her and brought her to her house in the injured state. It is also alleged that Imelda Orain aforesaid died at about 22.00 hours on that day. The prosecution case further is that the appellant used to abuse and quarrel with the informant prior to the occurrence regarding land. It is also alleged that the informant asked a boy of his village on Monday, i.e., 15.9.1997 to inform the police but he did not go there and the informant also could not go there because he was alone in the house with his daughter and he was thinking to go to the police station but in the meantime the police had come to his house.

4. The appellant has pleaded not guilty to the charge levelled against him and he claims himself to be innocent and to have committed no offence and that he has been falsely implicated in this case due to enmity which is existing and alive between the parties prior to the occurrence.

5. The prosecution has examined in all ten witnesses to substantiate the prosecution case. PW 7, Junas Uraon is the informant of this case and the husband of the deceased Imelda Orain and he is not the ocular witness of the occurrence rather as per prosecution case injured Imelda Orain has disclosed him about the details of the assault upon her by the appellant. PW 2 Sibiria Uraon and PW 3, Berna Xess the alleged eye-witness named in the fardbeyan of the informant as ocular witnesses of the occurrence have turned hostile and they do not at all support the prosecution case. PW 4, Sofia Khariain and PW 5, Julia Uraon, though not named in the fardbeyan of the informant, have also turned hostile and they also do not support the prosecution case. PW 6, Leoni Uraon, the daughter of the informant is also not the ocular witness of the occurrence and she claims to have learnt regarding the occurrence from her mother Imelda Orain on her return from the Jungle. PWs 1, 8 and 10 are the formal witnesses who have proved the formal FIR (Ext. 1), the fardbeyan (Ext. 2) and the Inquest Report (Ext. 4) respectively. PW 9, Dr. Krishna Deo Choudhary has conducted the post-mortem examination on the dead body of the deceased Imelda Orain and the postmortem report per his pen is Ext. 3 in this case. The I.O. of this case has not taken oath in support of the prosecution case.

6. In view of the evidence oral and documentary on the record and specially the evidence of PW 7, the informant, and his daughter PW 6, the learned Court below found the appellant guilty and convicted and sentenced him as stated above.

7. Assailing the impugned judgment as unsustainable and against any legal evidence on the record it has been submitted that the learned Court below has gravely erred in finding the appellant guilty. It has also been submitted that PW 9, Dr. Krishna Deo Choudhary who has conducted the post-mortem examination on the dead body of the deceased has categorically deposed that the injuries appearing on the head of the deceased were sufficient in normal course to cause instant death and in view of the medical evidence it is highly improbable that the deceased has disclosed regarding the assault on her by the appellant either to PW 7, the informant or his daughter, PW 6. It has also been submitted that there is no corroboration by any other independent, competent and natural witness of the occurrence regarding the oral dying declaration having been made by the

deceased to PWs 7 and 6 and the learned Court below has wrongly relied upon the evidence of PWs 7 and 6 in coming to the finding of the guilt of the appellant in the facts and circumstances of this case. It has also been submitted that there is abnormal unexplained delay of two days regarding lodging of the case in respect of the occurrence in question by the informant which casts a cloud of suspicion to the very credibility of the prosecution case and it is crystal clear that due to the admitted land dispute existing between the parties prior to the occurrence, this appellant, who is the son of the nephew of the informant has been falsely roped in this case with a view to wreck vengeance. It has also been submitted that the boy who gave the information regarding the occurrence to the informant when he was getting his buffalo grazed in the field has not been examined in this case which is equally a lacunae of the prosecution case. Lastly it has been submitted that due to the non-examination of the I.O., the appellant stands seriously prejudiced in this case as there is no objective finding of the I.O. regarding the place of occurrence and also the appellant have been debarred of the opportunity of eliciting facts in the cross-examination of the I.O. showing his innocence.

8. The learned APP has submitted that the deceased has stated to PWs 6 and 7 regarding the assault on her by the appellant when they had come to the house and there is no evidence on the record to give an inkling of the fact that the deceased was not in a position at all to speak inspite of the injuries on her head and in this view of the matter the learned Court below has rightly relied upon the oral dying declaration of the deceased made before PWs 7 and 6 and in this view of the matter there is no illegality at all in the impugned judgment.

9. It will admit of no doubt that Imelda Orain, the wife of PW 7, the informant has died in the night of 14.9.1997 in her house in village Lukaltoli Taiser due to the injuries inflicted on her head. PW 9, Dr. Krishna Deo Choudhary deposed to have conducted the post-mortem examination on the dead body of the deceased on 17.9.1997 at 12.30 p.m. and has found the following ante-mortem injuries :

(i) Lacerated wound 2-1/2' x 1' x 1-1/2' over the left side of fronto zygomatic area of the head with fracture of the same bone.

- (ii) Lacerated wound 1-1/2' x 1' x 1-1/2' over the left side of fronto zygomatic area of the head with fracture of the same bone.
- (iii) Lacerated wound 1-1/2' x 1' x 1' over the left side of head with fracture of bone.
- (iv) Lacerated wound 2' x 1/2' x scalp deep over the right side of parietal area of head (no fracture of underlying bone).
- (v) Lacerated wound 2-1/2' x 1/2' x skin deep over the left area.
- (vi) Abrasion 3' x 1-1/2' over the abdomen.
- (vii) Lacerated wound 3' x 1-1/2' x 1-1/2' over the left parietal region of head lateral to left eye with fracture of the same bone.

The medical witness has further deposed that on dissection he had found multiple fracture of skull bone with laceration and tearing of meninges and there was massive damage of brain matter and there was haemorrhage inside the brain and inside the skull. The medical witness has also deposed that injury Nos. (i), (ii), (iii), (iv) and (vii) were grievous in nature and the rest were simple. He has also deposed that the death of the deceased is due to coma and syncope produced by the head injury. The post-mortem report (Ext. 3) per his pen corroborates the testimony of the medical witness. In para 10 of his cross-examination the medical witness has categorically deposed that the injuries aforesaid were sufficient in the normal course to cause instant death. Now the pertinent question arises as to whether Imelda Orain, the deceased of this case was in a position to make oral dying declaration regarding the occurrence to PWs 6 and 7 in view of the nature of the injuries appearing on her head as stated by PW 9, the medical witness. It is relevant to mention at the very outset that there is no ocular witness of the occurrence in question and even PWs 2 and 3 who had rescued the deceased in the course of assault and brought her to her house from the place of occurrence along with others have turned hostile and they do not at all support the prosecution case. PW 7, the informant has deposed that at about 4.00 p.m. on 14.9.1997 he was getting his buffalo grazed in the field of the village where he got information by a boy of the village that his wife Imelda Orain has been assaulted by stone by the

appellant causing injury on her head and other parts of her body. He has further deposed that he came to his house where the deceased has stated to him that the appellant had asked her not to cultivate the land and he assaulted her and PWs 2 and 3 besides others had intervened in the scuffle and had brought her to her house. He has further deposed that the deceased has also told him that at the time of the occurrence she was returning to her house from her land. In para 6 of his cross-examination PW 7 has specifically deposed that he has not seen the assault and the deceased has disclosed about the occurrence to him when he was alone and there was no other person present in her house including her daughter (PW 6). He has also deposed that he has narrated about the occurrence to his daughter, (PW 6). His evidence is further to the effect that his wife Imelda Orain became unconscious after ten minutes of narrating the incident to him and she never regained consciousness and she died at about 22.00 hours on that very day. The evidence of PW 7, the informant excludes the presence of PW 6 totally when the said oral dying declaration was made by the deceased to PW 7. The evidence of PW 6 regarding oral dying declaration made by the deceased to her is palpably false and incorrect in view of the evidence of PW 7 referred to above. There is no iota of the evidence on the record brought by the prosecution to show the actual time of assault as well as the place of the assault besides the distance from the place of occurrence to the house of the informant. The prosecution is also conspicuously silent regarding the time when the alleged oral dying declaration was made by the deceased to PW 7, the informant. This is very vital aspect of the matter in respect of the oral dying declaration in view of the nature of injuries appearing on the head of the deceased. The objective finding of the medical evidence that the injuries appearing on the head of the deceased is sufficient to cause instant death of the deceased. The objective finding referred to above of the medical witness is worthy of credit in view of the fact that there was multiple fracture of the skull bone with laceration and tearing of meninges and there was massive damage of brain matter and there was haemorrhage inside the brain and inside the skull. In such a situation there is every likelihood of a person having such injuries on her head going in coma leading to instant death. According to the finding of the medical evidence on dissection of the injuries appearing on the head of the person, the deceased can never be said to be in a conscious stage

to make oral dying declaration. Furthermore there is no other evidence on the record to corroborate the fact that the deceased had made oral dying declaration before PW 7, the informant. It is the settled principle of law that a dying declaration is admissible in evidence on the principle of necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the premises that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime.

It is this premises which is considered strong enough to set off the need that the maker of the statement should state so on oath and be cross-examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the Court on a strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence neither extra strong nor weak and can be acted upon without corroboration if it is found to be otherwise true and reliable. Here in view of the evidence on the record it is crystal clear that the deceased was not at all in a position to make any oral dying declaration and the alleged oral dying declaration of the deceased as deposed by PW 7 uncorroborated by any other evidence of independent, reliable and competent natural witness is not free from blemish and is highly unreliable and, therefore, no credence can be attached to the testimony of PW 7 in respect thereof. Therefore, the case laws relied upon by the learned Court below have no application in the facts and circumstances of this case. Furthermore, admittedly there is enmity existing and alive between the informant and the appellant prior to the occurrence and, therefore, the false implication of the appellant in the facts and circumstances of this case cannot totally be ruled out. And last but not the least, there is abnormal unexplained delay in instituting the case by the informant

and there is no cogent explanation coming on the record in respect thereof and it, therefore, appears that after cool consideration and premeditation, the appellant has been roped in this case due to the enmity to wreck vengeance. The learned Court below did not meticulously consider the evidence on the record in proper perspective and has gravely erred in coming to the finding of the guilt of the appellant. Therefore, the impugned judgment suffers with illegality requiring an interference therein.

10. There is merit in this appeal and it succeeds. The appeal is hereby allowed.

The appellant is found not guilty of the charge levelled against him and he is acquitted. He is ordered to be set free forthwith, if not wanted in any other case.

Lakshman Uraon, J.

11. I agree.

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