

Raghnu Munda Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Dec-18-2006

Reported in : [2007(2)JCR131(Jhr)]

Judge : D.P. Singh and; D.G.R. Patnaik, JJ.

Appellant : Raghnu Munda

Respondent : State of Jharkhand

Disposition : Appeal dismissed

Judgement :

D.G.R. Patnaik, J.

1. Both the appellants were charged with for offences under Sections 302/34 of the Indian Penal Code for causing the death of Kishore Singh Rawani on 28.2.1992 and were sentenced by the trial court to suffer imprisonment for life.

2. The deceased Kishore Singh Rawani was the husband of the informant Gayatri Devi (PW3). The case, as unfolded by her, is that on 28.2.1992 at 5.00 p.m. a quarrel ensued between her minor son Bhanu, aged six years, with Bahadur Munda son of his neighbour Raghnu Munda (appellant) on account of the injury which the later had sustained when the informant's son pelted stones at a tree. The quarrel between the children soon led to a fracas between the female

members of both the houses Raghuni Munda intervened and he too indulged in abuses against the informant (PW3) and left the place giving out threats that he would soon take revenge. Later at about 6.00 pm. while the deceased Kishore Singh was returning home, he was accosted and restrained by both the appellants in front of their house. After restraining him, the appellant Raghuni held him while the appellant Ghunghru Munda whipped out a knife and inflicted a knife blow causing injury on the neck and also on the right side of the chest of the victim rendering him unconscious. The victim was picked up from the place where he had fallen on the ground and was taken to Hospital where he was declared dead. The matter was informed to the Police. The case was investigated by PW6 (Udai Narain Singh) who visited the place of occurrence, prepared the inquest report pertaining to the dead body of the deceased and forwarded the same to the hospital for post mortem examination. The post mortem examination on the dead body of the deceased was conducted on 29.2.1992 at RMCH, Ranchi by PW. 2 who found the following injuries:

Stab wound measuring 1 3/4x 1cm on the right side of the neck situated 5 cm right to midline and 3 cms above the right clavicle. The wound had passed through the soft tissues cutting the vessels of the right side of the neck and entered into the right chest cavity underneath the right clavicle and entered into the right lung.

He found presence of blood clot in the right chest. The doctor had opined that the above injuries were ante mortem caused by a sharp cutting weapon and death was due to shock and haemorrhage on account of the above injury which had occurred within 12-36 hours prior to the time of the post mortem examination.

As many as six witnesses including the informant (PW3) were examined by the prosecution at the trial. The trial court relying upon the evidence of the informant (PW3) and that of her minor son PW1 and also on the evidence of the Doctor and the investigating officer, recorded its finding of guilt and convicted the appellants for offences under Section 302/34 IPC.

3. The appellants have assailed the impugned judgment primarily on the ground that the finding of guilt as recorded by the trial court is entirely against the weight of evidence on record and that the trial court has erred in placing implicit reliance

on the testimony of the informant and her minor son, though their testimony is not corroborated by any independent witness and that both these witnesses are highly interested witnesses. Elaborating the grounds, learned counsel appearing for the appellants explains that PW1 is a child witness and the trial court should have scrutinized his evidence with extreme caution and should have sought corroboration to his testimony from other sources, which the trial court has failed to do. Learned counsel further adds that on reading the evidence of PWs. 1 and 3, there appears vital contradiction in their testimony. Learned counsel explains that where as PW3 (the informant) claims herself to be an eye witness to the alleged assault made on her husband by the assailants, PW1 declares categorically that at the time of the occurrence, it was he alone who was present with his father, (the deceased) and except the wife of the appellant Raghnu Munda, there was no other person present at the place of occurrence and that it was on his alarm that some of the villagers arrived and his mother (PW3) also arrived later at the place of the occurrence. Learned counsel argues that if PW3 was not present at or about the place of occurrence as declared by PW1, she could not have been an eye witness to the occurrence and in this view of the matter, her claim of being an eye witness and giving the description regarding the manner of occurrence apparently suggests that she is a got up witness. Learned counsel further submits that PW3 in her deposition has not affirmed the presence of PW1 at the place of the occurrence and therefore the claim of PW1 to be an eye witness to the occurrence is also falsified.

Referring to the manner of the occurrence as deposed by both the above named witnesses, learned counsel submits that PW3 claims that the assailant had dealt a knife blow on the right side of chest of her husband and similarly, PW1 also claims that the assault was made on the chest of his father, but the post mortem report indicates that the injury was on the neck of the victim, and not on his chest. Learned counsel argues further that there is no corroboration from any independent witness, although PW1 has claimed that several persons of his village had arrived at the place of the occurrence. Continuing with the arguments, learned counsel further submits that even according to the entire evidence of PWs 1 and 3, no offence under Section 302 IPC is made out. Learned counsel explains that there was a single blow dealt upon the deceased by the assailant and there is

no such evidence or allegation that the assailant had repeated the assault. Learned counsel argues that this fact in itself is sufficient to indicate that there was no intention to cause death of the deceased nor was there any intention to cause fatal injuries, which was likely to cause death of the victim. Learned counsel submits that the circumstances could at best suggest a case under Section 304(Part II), for an offence of culpable homicide not amounting to murder. Learned counsel adds further that the circumstance needs to be viewed in the sequence as narrated by the witness and the genesis of the occurrence has to be considered. Learned counsel explains that even according to prosecution's case, the assault on the deceased was preceded by a quarrel between the children and ladies of both the families. This had caused grave provocation to the appellants and it was on account of such provocation that the deceased was assaulted, though there was no intention on the part of the appellant to cause death of the deceased.

4. Learned counsel for the State, on the other hand, while defending the judgment of conviction and sentence, submits that the evidence of PW1 and 3 read together are fully consistent and that the possibility of PW3 witnessing the occurrence cannot be ruled out merely on the ground that PW1 stated that she was not present at the place of occurrence at the time when his father was assaulted. Learned counsel explains that it is in the evidence of PW3 that just prior to the occurrence while she was standing in front of the house that she saw her husband approaching that the appellants intercepted him in front of their house which according to the investigating officer, PW6, is at a distance of 20-25 yards from the informant's house. Learned counsel explains further that the informant could see the occurrence from the distance and on seeing the assault, she and some villagers rushed to the place of occurrence and by the time they arrived at the place of occurrence, the assailant had fled away.

5. Referring to the evidence on record, it appears that both PWs 1 and 3 have claimed to be eye-witnesses to the occurrence. The age of PW1 on the date of recording his deposition at the trial was 10 years indicating thereby that at the time of the alleged occurrence, he was 6 years old. Considering the fact that this witness is a child witness, the trial court had preferred to satisfy itself regarding the competency of the witnesses and the possibility of his understanding the questions

put to him and giving answer thereto intelligibly and by the answers given by this witness to certain questions put to him, the trial court had recorded satisfaction that the witness was capable of understanding the question and answering the same intelligibly and thereafter proceeded to record the evidence of the Witness. This witness in his evidence has stated categorically that at about 5.30 p.m. in the evening of the alleged date of occurrence, while he was returning home along with his father, he saw both these appellants near their house, when one of them, namely Raghnu Munda caught hold of his father and Ghunghru assaulted his father with a knife on his neck. On being so assaulted, he fell down on the ground. Later his father was taken to hospital where he died. In his cross-examination, he has specified the place of occurrence to be an open place in front of the house of the appellants. He has described the place by reference to the name of next door neighbour of the appellants' house. He affirms that he had met his mother to whom he had stated about the occurrence. He also affirms that his statement was recorded by the Police in which he had mentioned about the fact that he was also accompanying his father. He also affirms that both the accused persons came together from eastern side. To a specific question, he answers that at the time of occurrence, besides the accused persons, the wife of the accused Raghnu was the only person there and none else and his mother came there later. This witness appears to have stood firm in his cross-examination that he had witnessed the occurrence and in his description regarding the manner of occurrence as also the identity of the assailants of his father.

6. Referring to the evidence of PW3 (informant) who also claims herself to be an eye witness, she has claimed that while her husband Kishore Singh was returning home from the market, he was caught hold by the two accused persons in front of their house and the appellant Ghunghru assaulted her husband (deceased) with a knife on the right side of his chest. Referring to the genesis of the occurrence, she has stated that the reason for assault was a quarrel between the children and members of both families which occurred an hour earlier in which the appellant Raghnu Munda had also participated and gave out abuses and threats.

Learned counsel for the appellants contends that this witness has not affirmed the presence of PW1 at the place of the occurrence, nor does she state about seeing

PW1 coming along with the deceased and therefore this vital omission amounts to a contradiction in her statement when read in the light of the evidence of PW1. Learned counsel also points out that the statement of PW1 that his mother (PW3) was not present at the place of the occurrence and therefore she came out later is also significant since PW1 eliminates the presence of PW3 at the place and the time of the occurrence.

7. For better appreciation of the above controversy raised by the learned counsel for the appellants, reference to the evidence of the investigating officer (PW6) and his description about the place of occurrence is relevant. The investigating officer has described the place of occurrence to be an open space beside the house of the appellants. PW3 has not claimed that she was present at the place of the occurrence. Rather, she has claimed to have seen the occurrence while standing in front of her own house and the occurrence had taken place in front of the house of the appellants, which according to PW1 is situated at a distance of 25-30 cubits from the house of the informant. Thus, the statement of PW1 that at the time when the occurrence took place, except the wife of appellant Raghnu Munda, none else was present at the place of occurrence and that his mother came later is not inconsistent with the evidence of PW3. This witness has apparently stated what he had seen at the place of the occurrence. Likewise, mere omission of the name of PW1 by PW3 as the person present along with the deceased at the time of the occurrence, does not in itself lead to any contradiction since she has not specifically denied the presence of PW1 along with the deceased at the time of the occurrence. The purported contradiction in the evidence of PW3 vis-a-vis the evidence of the doctor does not amount to a serious contradiction. As per the evidence of the doctor and the post mortem report, there were injuries commencing from neck to the right portion of chest and considering the fact that the witness had seen the occurrence from a distance, it is natural that she had stated what she had perceived from there. There appears consistency in the evidence of both PWs 1 and 3 in respect of the place of occurrence, manner of occurrence, the role played by the individual accused/appellants and the situs of injury sustained by the deceased at the hands of the assailants. Even though PW1 happens to be a child witness, but his evidence does inspire confidence and is trustworthy as it finds corroboration from the medical evidence also.

8. Thus, from the consistent evidence of PWs 1 and 3, it transpires that both the accused appellants had together accosted the deceased on the way in front of their house, restrained him and thereafter the appellant Lakhi Charan Munda @ Ghunghru inflicted a knife blow on the deceased resulting in the fatal injuries to the victim. The above circumstances indicate amply that while fatal injury was caused by the appellant Lakhi Charan Munda, assault on the deceased was made pursuant to a definite common intention shared between both the appellants. Sharing of common intention is further reflected from the fact that while one of the appellants, namely Raghnu caught hold of the deceased, the other appellant Lakhi Charan inflicted the knife injury on the victim.

9. As to whether the intention of the appellants was to commit murder of the deceased or merely to inflict bodily injuries on him, reference is to be made to the nature of the injuries caused to the victim. The medical report indicates that there was only one blow which was dealt upon the deceased and there was no repetition of assault. Further, the nature of injuries indicates however that the force with which assault was made was such that after piercing the neck, the knife travelled deep into the heart stretching across a length of five inches and ruptured not only a portion of the heart, but also the lung of the victim. The part of the victim's body selected for inflicting injury and the force applied for the assault and the extent of injury caused, demonstrates that the assault was made with knowledge that it was liable to cause such bodily injury as to cause death of the victim. Non-repetition of assault does not mitigate the gravity of the act.

The submission of the learned counsel for the appellants that the assault was made on the spur of the moment and that too on account of grave provocation given to the assailant/ appellants, appears to be misplaced and misconceived. There is nothing on record to suggest that the deceased had given any provocation whatsoever from his side. The earlier quarrel between the children and members of both the families had occurred about an hour prior to the assault made on the deceased and therefore, it cannot be said that the earlier quarrel between the children and female members had given any provocation so as to prompt the appellants to assault the deceased.

10. We do not find any infirmity in the findings recorded by the learned trial court or the reasons assigned thereto. We do not find any merit in this appeal. Accordingly, these appeals are dismissed. The conviction and sentence as imposed by the trial court against the appellants is sustained.

The appellant Raghnu Munda is on bail. He is directed to surrender himself before the trial court within ten days of this order and undergo the sentence imposed upon him by the trial court. In the event to the appellant failing to surrender in the court below, the trial court shall take all coercive steps to take him into custody forthwith.

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