

Birendra Kumar Sah and Ors Vs. State

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Court : Jharkhand

Decided On : Nov-10-2016

Appellant : Birendra Kumar Sah and Ors

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Appeal (D.B.) No.50 of 1992(P) With Criminal Appeal (D.B.) No.86 of 1992(P) ----- (Against the Judgment of conviction dated 16.3.1992 and order of sentence dated 23.3.1992 passed by learned Sessions Judge, Godda, in Session Case No.64 of 1990) 1. Birendra Kumar Sah 2. Sharat Chandra Dutta 3. Nand Kumar Bhagat 4. Uttam Kumar Dutta 5. Bipin Kumar Jaiswal . Appellants (in Cr. Appeal No.50 of 1992(P) With Ranjit Kumar Sah . Appellant (in Cr. Appeal No.86 of 1992(P) -Versus - The State of Bihar (Now Jharkhand) .. Respondent (in both cases) PRESENT HONBLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE Dr. S.N. PATHAK .. For the Appellants : Mr. Kailash Prasad Deo Mr. Gaurav Mr. Jay Prakash Pandey (Advocates in respective cases) For the State : Mr.Ram Prakash Singh, APP For the Informant : Reserved on:

27. 10.2016 Pronounced on:

10. 11.2016 H.C. Mishra, J.

- As both these appeals arise out of the same case, we have heard these appeals together and they are being disposed of by this common Judgment.

2. The appellants in both these appeals are aggrieved by the Judgment of conviction dated 16.3.1992 and order of sentence dated 23.3.1992 passed by the learned Sessions Judge, Godda, whereby the appellant Ranjit Kumar Sah was found guilty for the offence under Sections 148, 302 and 324 of the Indian Penal Code and was convicted for the same, whereas the other appellants have been found guilty for the offence under Section 147 and 302 of the Indian Penal Code read with Section 149 of the Indian Penal Code and they were also convicted for the same. Upon hearing on the point of sentence, the appellant Ranjit Kumar Sah was sentenced to undergo imprisonment for life for the offence under Section 302 of the Indian Penal Code, he was further sentenced to 2 undergo rigorous imprisonment for three years for the offence under Section 324 of the IPC and R.I. for two years for the offence under Section 148 of the Indian Penal Code. The other appellants were sentenced to undergo imprisonment for life for the offence under Section 302 read with 149 of the Indian Penal code and rigorous imprisonment for two years for the offence under Section 147 of the IPC and all the sentences were directed to run concurrently. It may be stated that along with the appellants, one Janardhan Pal, had also been convicted and sentenced by the Trial Court below, but during the pendency of his criminal appeal No.50 of 1992(P), he died and accordingly, by order dated 1.9.2016 passed by this Court, the appeal abated qua the said appellant.

3. The sole appellant in Criminal Appeal No.86 of 1992 faced the trial for the offence under Sections 148, 302 and 324 of the Indian Penal code and Section 3 of the Explosive Substance Act, whereas the appellants in Criminal Appeal No.50 of 1992 faced the trial for the offence under Sections 147 and 302 of the Indian Penal code read with Section 149 of the Indian Penal Code.

4. The prosecution case giving rise to these appeals is that on 30.5.1989 at about 7:00 PM in the evening, there was some noise of altercation, whereupon the informant Dilip Prasad Sah went to the place of occurrence and saw that Manas Kumar Dutta and Asit Kumar Dutta were surrounded by the accused persons

Ranjit Sah, Birendra Sah, Sharat Chandra Dutta, Janardhan Pal (since dead), Nand Kumar Bhagat, Uttam Kumar Dutta and Bipin Kumar Jaiswal and the father of the informant was trying to pacify them, asking them not to quarrel. The informant also requested the accused persons not to quarrel among themselves and stated that he was taking his father to his home, whereupon all the aforesaid accused persons shouted to kill all of them and the accused Ranjit Sah assaulted the father of the informant by bomb causing injuries on his chest, due to which his father fell down and died at the spot. The informant Dilip Prasad Sah, Manas Kumar Dutta and Asit Kumar Dutta also sustained injuries by the splinters of the bomb. Thereafter, the accused persons fled away and entered into the house of one Ganesh, closed the front door and fled away through the rear door. The fredbeyan to the aforesaid effect was recorded at about 11 PM in the same night, on the basis of which Boarijore (Lamatia) P.S. Case No. 49 of 1989, corresponding to G.R. No.417 of 1989, was instituted and investigation was taken up. After investigation, the police submitted the charge-sheet also against three more accused persons, namely Anandi Dutta, Birbal Sah and Sheo Kumar Dey, besides the aforementioned accused persons. After commitment of the case to the Court of Session, the charges were framed as aforesaid against the accused persons. There being denial of the charges by the accused persons, they were put to trial.

5. In course of trial, 14 witnesses were examined on behalf of the prosecution, including the informant, the injureds, doctors examining the injureds 3 and conducting the post mortem examination upon the deceased, as also the I.Os. The defense has also examined two witnesses in the case. Upon trial, by the impugned judgment of conviction and order of sentence was passed by the learned Sessions Judge, Godda, convicting and sentencing the appellants as aforesaid, but the accused Anandi Dutta, Birbal Sah and Sheo Kumar Dey were acquitted of the charges in absence of sufficient evidence against them.

6. Before entering into the rival contentions of the learned counsels for both the sides, a brief description of the evidence on record is necessary. PW-1 Dilip Prasad Sah who is informant and injured, PW-2 Manas Kumar Dutta, PW-3 Asit Kumar Dutta, who were also injured in the occurrence, have supported the

prosecution case. From the evidence of these witnesses, it is apparent that both the parties are closely related, in as much as, the accused Ranjit Sah is the cousin of the informant Dilip Kumar Sah and the accused Sharat Chandra Dutta is also the brother of PW-3 Asit Kumar Dutta. These prosecution witness have supported the prosecution case stating that on the date, place and time of occurrence, there was an altercation, in which, Manas Kumar Dutta and Asit Kumar Dutta were surrounded by the accused persons Ranjit Sah, Birender Kumar Sah, Sharat Chandra Dutta, Nand Kishore Bhagat, Uttam Kumar Dutta, Bipin Kumar Jaiswal and Janardan Pal (since dead) on the village road and they were quarreling. The accused persons were armed with pistols and bombs. The deceased, who was father of the informant, had intervened in the quarrel and he was trying to pacify them. In the meantime, PW-1 the informant Dilip Prasad Sah came there and requested them not to quarrel and he told that he was taking away his father, whereupon all the accused persons in one voice shouted to kill them and Ranjit Sah assaulted the father of the informant by bomb causing injuries on his chest, due to which, he died at the spot. In course of the occurrence, these witnesses had also sustained splinters injuries and they are the natural eyewitnesses to the occurrence. PW-1 has also identified the fredbeyan, which was marked as Ext.-1. These witnesses have been put to extensive cross-examination by the defense side, but nothing could be taken to discredit their testimony. In his cross-examination PW-1 had also stated that at the time of occurrence, it was moon lit night. PW-2 Manas Kumar Dutta, who was also injured in the occurrence, has also stated that on the date of occurrence, he along with Asit Kumar Dutta had returned back on a motorcycle from Mohanpur Chowk and after parking the motorcycle in the house, they were going on the village road when they were waylaid by the aforesaid accused persons, who were armed with pistols and bombs and there was quarrel between them, in course of which the occurrence took place. In his cross-examination, he has stated that on the date of occurrence, he and Asit Kumar Dutta had returned from Mohanpur Chowk after dropping his car driver at Mohanpur. Similarly, PW-3 Asit Kumar Dutta has also supported the 4 aforesaid facts. In his cross-examination, he has stated that he was taken in adoption by late Hari Kinkar Dutta and the accused Sharat Chandra Dutta is the son of his biological parents. He has also admitted that Sharat Chandra Dutta was

demanding share in property of his adopting father and the other co-accused persons were supporting him. This witness was not ready to give any share in the said property, due to which the altercation had taken place. PW-5 Om Prakash Sah is the other son of the deceased, who has also supported the prosecution case as eyewitness, stating that he had also gone along with his father at the place of occurrence, though this fact is not stated in the FIR nor in the examination-in-chief by PW-1 Dilip Kumar Sah, who is his own brother. However in his cross-examination, PW-1 Dilip Kumar Sah has stated that this witness had also gone to the place of occurrence along with his father. PW-5 has also supported the prosecution case as aforesaid and he has also stated in his cross-examination that it was the moon lit night at the time of occurrence.

7. PW-13 Dr. Barhamdeo Prasad Sinha had examined the injuries of Manas Kumar Dutta, Dilip Prasad Sah, Asit Kumar Sah and Shym Kumar Gupta and he has also proved the injury reports as Exhibit-5 series, showing that these witnesses had sustained simple injuries caused by explosive material. PW-14 Dr. Ajoy Kumar Jha had conducted the Post mortem examination on the deceased and has stated that in the post mortem examination that he had found a gutter-like wound on the front of the upper part of the chest up to the lower third of the neck about 6x6x5 in size. The chest wall of that area was missing. There was pool of blood in the gutter of the wound. Besides, he had also found abrasions on the body of the deceased. On dissection, he had found lower third of the neck of the deceased grossly lacerated. The trachea was broken and esophagus was torn. The neck muscles were found grossly lacerated and so were the vessels. The lungs were found lacerated. Arch of aorta and major veins were also found lacerated. The thoracic cage was found filled with blood. There were foreign bodies, like iron materials and sutli inside the wound. He has stated that the injuries found on the deceased were ante mortem in nature, which were the cause of the death and the injuries were caused by explosive material. He has identified the post mortem report, which was marked as Ext.-6.

8. PW-7 Jadglesh Prasad Sah and PW-11, Motilal Mishra are the I.Os. in the case, who have stated about the investigation and submission of charge sheet. PW-11 Motilal Mishra has proved the formal FIR as Ext.-3, inquest report of the dead

body as Ext.-4 and he has also identified the seizure list, which was proved by PW-4 Md. Maniruddin, stating that the seizure list was prepared in his presence, in which the I.O. had seized blood stained earth and splinters of bomb (iron nails) from the place of occurrence, on which he had also put his signature.

9. PW-9 Shym Kumar Gupta has stated that he was also injured in the occurrence by the splinters of the bomb, but this witnesses has turned hostile 5 and though he has stated that there was a quarrel, but he has not stated that who had assaulted the deceased. PW-12, Anand Kumar Dutta has also turned hostile. PW-6 Babblu Hansda and PW-8 Jay Prakash Chaudhary are not the eyewitness to the occurrence. PW-10 Aadhar Chandra Datta was only tendered by the prosecution.

10. The defense has examined two witnesses, i.e., D.W.-1 Md. Shamim and D.W.-2 Puran Bhagat. D.W.-1 Md. Shamim is the driver of P.W.-2, who has stated that he had not gone to the village of the informant on the date of occurrence.

11. Learned counsel for the appellants in Criminal Appeal No.50 of 1992 has submitted that there is no allegation of any assault against these appellants and these appellants have been found guilty and sentenced for the offence only with the help of Section 149 IPC. It is submitted that PW-3 Asit Kumar Dutta has admitted that the accused Sharat Chandra Datta is his brother, who was demanding share in property and as such there was property dispute between them. It is submitted that the other appellants had no concern with the property and accordingly, this is a case of false implication of the appellants due to the property dispute. It is submitted that there is complete lack of mens rea as against the appellants in Criminal Appeal No.50 of 1992, and there was no motive for committing the offence. Learned counsel has also submitted that though the witnesses PW-1 Dilip Prasad Sah and PW-5 Om Prakash Sah, who are the sons of the deceased, have stated that it was moon lit night at the time of occurrence, but it is apparent from the discussions in the impugned Judgment that almanac of that day showed that the moon rose in the sky at around 2 AM in the night, which clearly goes to show that the witnesses are not trustworthy. Learned counsel also submitted that the time of occurrence being 7 PM in the night, there was no source of light and accordingly, the identification of the accused persons is absolutely

doubtful and as such, the appellants of criminal appeal No.50 of 1992 are entitled to the benefit of doubt.

12. Learned counsel for the sole appellant in criminal appeal No.86 of 1992 has further submitted that in any event, this appellant at the time of occurrence was a juvenile being less than 16 years of age. It is submitted that it is well settled principle of law that plea of juvenility can be taken at any stage and in view of the fact that the appellant was below 16 years of age, he could not have been tried along with other co-accused persons and accordingly, the very trial of the appellant is absolutely illegal and vitiated. Learned counsel has also argued that there was no source of light at the time of occurrence, being 7 PM in the night and accordingly, the identification of the accused is very doubtful. As such, the benefit of which, must go to this appellant also.

13. Learned counsel for the State as also learned counsel for the informant, who has appeared through advocate in criminal appeal No.50 of 1992, have submitted that the witnesses have fully supported the prosecution case and nothing could be taken from the witnesses to discredit their testimony. The ocular evidence of the witnesses are fully supported by the medical evidence of PW-14, Dr. Ajoy Kumar Jha, who has proved the post mortem report showing that the death of the deceased had been caused due to injuries sustained by explosive material, and by PW-13 Dr. Barhamdeo Prasad, who had examined the injuries of the injureds, showing the injuries caused by explosive material. PW-11 Motilal Mishra, the I.O. had also supported the case that he found the dead body of the deceased at the place of occurrence lying in the pool of blood. He prepared the inquest report, which was also marked as Ext.-4 during the trial, and he collected the blood stained earth and the splinters of bomb from the place of occurrence and prepared the seizure list, Ext.-2. Learned counsel submitted that the informant and the injured witnesses have stated that in course of altercation the father of the informant also went there to pacify the quarrelling parties and the informant also went there upon hearing the noise and he also tried to pacify them stating that he is taking back his father, whereupon, all the accused persons in one voice shouted to kill them and appellant Ranjit Sah assaulted the deceased by bomb causing his death at the spot. It is submitted by learned counsels for the State and the

informant that even though there is no allegation of assault against the appellants of Criminal Appeal No.50 of 1992, but all the witnesses have clearly stated that at the spur of the moment, they also showed their intention to kill them, whereupon the appellant Ranjit Sah assaulted the deceased by bomb. It is submitted that this clearly shows that these appellants were also sharing the same common object of committing the offence and accordingly, they have rightly been convicted for the offence with the help of Section 149 IPC. There being direct allegation of assault against the appellant Ranjit Sah causing the death of the deceased at the spot, which allegation has been fully proved by the prosecution witnesses, he has also been rightly convicted and sentenced by the Trial Court below.

14. Learned counsel for the informant has placed reliance upon the decision of the Supreme Court in Ramchandran and Ors. Etc. Vs. State of Kerela, reported in AIR 2011 SC3581 wherein where the law has been laid down as follows:-

14. However, once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some over act. For the purpose of incurring the vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. (Emphasis supplied.) 15. In support of his contention, learned counsel also placed reliance upon the decision of the Supreme Court in Gangadhar Berera & Ors Vs. State of Orissa, reported in (2002 SCC) 8 SCC381 wherein the law laid down as follows:-

"2. ----- . The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the

acts which fall within the purview of Section 141. The word object means the purpose or design and, in order to make it common, it must be shared by all. ----- . It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. ----- .

23. Common object is different from a common intention as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. ----- .

24. Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in 8 prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. ----- . Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident. " (Emphasis supplied.) 16. Placing reliance on these decisions, learned counsel submitted that the evidences on record clearly show that all the accused persons were variously armed with pistol and bomb and when the deceased intervened in the quarrel to pacify them, they all shouted to kill all of them and the appellant Ranjit Sah assaulted the deceased by bomb causing

his death at the spot. This clearly shows that the appellants of Criminal Appeal No.50 of 1992 were also sharing the common object of committing the offence and they have rightly been convicted with the help of Section 149 IPC. Learned counsels accordingly, submitted that there is no illegality in the Judgment passed by the Trial Court below.

17. Having heard learned counsels for both the sides and upon going through the record, we find that in this case, the witnesses PW-1, Dilip Prasad Sah, PW-2 Manas Kumar Dutta, PW-3 Asit Kumar Dutta and PW-5, Om Prakash Sah have fully supported the prosecution story that all the accused appellants were forming an unlawful assembly, variously armed with pistols and bombs, and in prosecution of the common object of that unlawful assembly, in one voice they shouted to kill the informant's side, whereupon the appellant Ranjit Sah assaulted the deceased by bomb causing his death at the spot and injuring the prosecution witnesses by splinters. PWs-1, 2 and 3 were also injured in the occurrence and as such, they are the natural eye witnesses to the occurrence. Though they were put to extensive cross-examination by the defense on the manner of occurrence, but nothing could be taken to discredit their testimony. The ocular evidence of these witnesses is fully corroborated by the medical evidence of PW-13 Dr. Barhamdeo Prasad, who has proved the injury reports of these witnesses as Ext. 5 Srs., showing injuries caused by explosive material and PW-14 Dr. Ajoy Kumar Jha, who has proved the post mortem report of the deceased as Ext. 6, clearly showing that the deceased had died upon sustaining the injuries caused by explosive substance. We find that the evidence on record clearly shows that the appellants in criminal appeal No.50 of 1992 were sharing the common object of committing the offence and they were the members of the unlawful assembly variously armed and there cannot be any 9 doubt that all the appellants were sharing the common object for committing the offence. The fact that these witnesses are closely related, shall in itself not affect the credibility of these witnesses, as the story given by these witnesses is fully corroborated by the medical evidence on record.

18. The submission of the learned counsels of the appellants that the time of occurrence being the 7 PM in the night and almanac of that day showed that the moon had risen at 2 AM in the night and as such, there can be no source of light at

the place of occurrence, cannot be accepted. The Judgment in Appeal clearly shows that the almanac of that day, i.e., 30.5.1989, clearly showed that on that day, the sun set was at 6:44 PM and the occurrence had taken place thereafter at 7:00 PM. Learned Sessions Judge has dealt with this question in his Judgment stating that simply because of some of the witnesses had stated that there was light of moon at 7 PM, their testimony cannot be discredited on that basis alone. In view of the fact that the sun had set at 6:44 PM, there must have sufficient light at 7 PM as it takes sufficient time to become complete dark after the sun set. The occurrence had taken place almost soon after the sun set. It is also apparent from the evidence on record that the place of occurrence is the village road and by the side of the road, there were houses of the village and as such, it cannot be accepted that there would be no source of light at the place and time of occurrence. The evidence on record clearly shows that both the parties are closely related and accordingly, they must have been very well identified at the time of occurrence when the quarrel was going on between them. In view of these materials on record, we are of the considered view that the identification of the appellants at the time of occurrence cannot be doubted.

19. We also find that the submission of the learned counsel for the sole appellant in Cr. Appeal No.86 of 1992 that at the time of occurrence the appellant was a juvenile, has no legs to stand. Admittedly, as the occurrence had taken place on 30.5.1989, the appellant would be guided by Juvenile Justice Act, 1986, according to which, a boy below the age of 16 years, shall be treated as juvenile. The Lower Court Record shows that the plea of juvenility was taken by the appellant Ranjeet Kumar Sah in course of trial after examination of some witnesses. Due enquiry was made by the Trial Court about the juvenility of the appellant and by order dated 19.8.1991, on the basis of the evidence adduced in the enquiry, it was found that the appellant Ranjit Kumar Sah was above the age of 16 years on the date of occurrence. This order was never challenged by the appellant before any superior Court, and accordingly, the order attained its finality. The plea, now cannot be entertained at this stage.

20. In view of the aforementioned discussions, we find no illegality in the Judgment passed by the Trial Court below, convicting the appellant Ranjeet Kumar Sah for

the offences under Section 148, 302 and 324 of the IPC and sentencing him for the same, as aforesaid. This appellant has rightly not 10 been convicted for the offence under Section 3 of the Explosive Substance Act in absence of any sanction by the appropriate Government. We also find that the remaining appellants have also been rightly convicted and sentenced for the offences under Sections 147 and 302 read with Section 149 of the Indian Penal code and have been rightly sentenced for the same.

21. As such, the impugned Judgment of conviction dated 16.3.1992 and the order of sentence dated 23.3.1992 passed by the learned Sessions Judge, Godda, in Session Case No.64 of 1990, are hereby, affirmed. Consequently, the bail bonds of the appellants, are hereby, cancelled and the Trial Court below is directed to issue processes compelling the surrender / production of the appellants for serving out the sentence.

22. Both these appeals accordingly, stand dismissed. Let the Lower Court Records be sent back forthwith along with the copy of this Judgment for the needful. (H.C. Mishra, J.) Dr. S.N. Pathak, J.

(Dr. S.N. Pathak, J.) Jharkhand High Court, Ranchi Dated the 10th of November, 2016. R. Kumar/AFR

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