

Criminal Appeal (D.B.) No. 396 of 2013
with
Criminal Appeal (D.B.) No. 1112 of 2012
with
Criminal Appeal (D.B.) No. 36 of 2013

Against the judgment dated 06.10.2012 passed by the learned Principal Sessions Judge, Lohardaga in S. T. No. 37 of 2010/S.T. No. 42 of 2010.

Karu Paswan Appellant (in Cr. Appeal D.B. No. 396/2013)
Nandu Baitha Appellant (in Cr. Appeal D.B. No. 1112/2012)
Dhaneshwar Paswan Appellant (in Cr. Appeal D.B. No. 36 /2013)

Versus

The State of Jharkhand Respondent
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For the Appellants	: Mr. Girish Mohan Singh, Amicus Curiae (in Cr. Appeal DB No. 396/2013 and 36 of 2013) : Mr. Lalit Yadav, Advocate (in Cr. Appeal DB No. 1112 of 2012)
For the Respondent	: Mr. Shekhar Sinha, A.P.P.

Present:

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE RAJESH KUMAR

By Court: Heard Mr. Lalit Yadav, learned counsel for the appellant in Cr. Appeal DB No. 1112 of 2012. No one appears for the appellants in Cr. Appeal DB Nos. 396 of 2013 and 36 of 2013. Accordingly Mr. Girish Mohan Singh is appointed as Amicus Curiae in the present case to assist the court.

2. This application is directed against the judgment dated 06.10.2012 passed by the learned Principal Sessions Judge, Lohardaga in S. T. No. 37 of 2010/S.T. No. 42 of 2010 whereby and whereunder the appellants have been convicted for the offences under Section 302/34 of the I.P.C. and Section 341/34 of I.P.C. and all the appellants have been sentenced to undergo R.I. for life for the offence under Section 302/34 of I.P.C. along with a fine of Rs. 5,000/- so far as the appellants in Criminal Appeal (DB) No. 36 of 2013 and 1112 of 2012 are concerned and Rs. 10,000/- to the appellant in Criminal Appeal (DB) No. 396 of 2013. So far as the sentence

imposed upon the appellants under Section 341/34 of I.P.C. is concerned, all have been sentenced to undergo S.I. for a period of one month and a fine of Rs. 200/- each.

3. The prosecution story in brief is that on 02.08.2009 at about 8 P.M., the informant was sitting along with her husband (Rambilash Yadav), her daughter, mother-in-law and father near the boundary wall of the house and the accused came and demanded money from her husband. It has been alleged that when her husband disclosed that he did not have any money, an altercation began to which the accused persons went back, but returned back after 5 minutes. It has been alleged that Dhaneshwar Paswan and Nandu Baitha had caught the hand of the deceased and Karu Paswan had given a Tangi blow. On raising alarm, the villagers assembled and the accused persons fled away. It has been alleged that the husband of the informant was taken to Kuru hospital for treatment from where he was referred to RIMS, Ranchi. The reason for the occurrence as has been described in the Fard Bayan is that Dhaneshwar Paswan had earlier taken an amount of Rs. 3,000/- from the deceased for going to the brick kiln and he was demanding a further amount of Rs. 25,000/-. It has also been stated that Rambilash Yadav died during the course of treatment. Initially, Kuru P. S. Case No. 64 of 2009 based on the aforesaid allegation was registered for the offences under Sections 341/307/34 of I.P.C. and on account of the death of Rambilash Yadav vide order dated 08.09.2009, Section 302 of I.P.C. was added. After investigation, charge-sheet was submitted against Karu Paswan and Dhaneshwar Paswan pursuant to which cognizance was taken and the case was committed to the Court of Sessions. Subsequently, however a supplementary charge-sheet has been submitted against Nandu Baitha in which after taking of cognizance, the case was committed to the court of Sessions. Vide order dated 08.05.2010 S. T. No. 37 of 2010 and S. T. No. 42 of 2010 were amalgamated. Charges were framed under Section 302/34 of I.P.C. and under Section 341/34 of I.P.C., to which the accused persons pleaded not guilty and claimed to be tried.

4. In course of trial, 7 witnesses have been examined on behalf of the prosecution.

5. **P.W. 1** – Monica Kumari is the daughter of the deceased who has stated that the incident had occurred about 2 years back. She has stated that her father was in the house along with other witnesses – her siblings, her uncle Balku Yadav (Sukhbilas Yadav), her mother and father. She has stated that Nandu Baitha came to his house and demanded Rs. 5,000/- from her father. She further stated that her father replied that he cannot give such amount as he is a poor person at which Dhaneshwar Paswan and Nandu Baitha had caught hold of her father and Karu Paswan had assaulted him with a Tangi. She has stated that the accused persons after the incident had fled away. She has further stated that her father was taken to Kuru hospital by her uncle from where he was sent for treatment to Ranchi. In cross-examination, she has stated that all the inmates of the house were eating. She has stated that Nandu Baitha was first to come and when the assault had taken place, they had already taken their meals. She has further stated that her father used to sell chick peas. She has also stated that the house of Nandu is at about a distance of 100-125 metre. This witness has deposed that there was never any quarrel with Nandu earlier. The money according to her was demanded by Dhaneshwar Paswan.

6. **P.W. 2** – Sarita Devi is the informant and the wife of the deceased. She has deposed that she was in the house along with her brother-in-law Sukhbilas Yadav, her mother-in-law Balo Devi and her father Balram Yadav and the children. She has stated that everyone were having their meals and the lamp was burning and she had kept a torch in her hands. She has stated that Dhaneshwar Paswan and Nandu Baitha demanded an amount of Rs. 50,000/-. Earlier her husband had given an amount of Rs. 3,000/- to Dhaneshwar Paswan. She has stated that her husband had demanded the money back. She has further stated that Nandu and Karu induced her husband to come to the courtyard as Dhaneshwar Paswan had come to return the money. She further deposed that Dhaneshwar Paswan demanded an amount of Rs. 50,000/- and thereafter Nandu and Dhaneshwar caught hold of her husband and Karu assaulted with a Tangi on his head. She has further stated that after the assault the accused persons fled away and the husband of the informant was taken to a government hospital for treatment and from where he was referred

to Ranchi for treatment. She has deposed that she was not on talking terms with neighbouring people and denied the suggestion that she was involved in selling liquor. She has also stated that when alarm was raised, no one had come. She has further stated that when her husband was induced to come out, she was inside the house. She thereafter came out. She has further stated that at the time of incident, everyone was present and it was dark when the occurrence had taken place. It has also been stated that house of Nandu Baitha is at a distance of 5-6 houses and Nandu Baitha is a teacher as disclosed by her and there was never any fight with him. She further stated that there was never any monetary dealing with Nandu and her brother-in-law.

7. Sukhbilas Yadav – **P.W. 3** has stated that on the date of occurrence, he along with his family members were taking dinner at which time Nandu Baitha had come and his brother was induced to come out saying that Dhaneshwar and Karu have come to return the money. He has stated that as soon as his brother came out of his house, Karu assaulted him with Tangi and he fell down in the house. He has stated that about 6 months back, his brother had given Rs. 3,000/- to Dhaneshwar Paswan. This amount was demanded by his brother in the afternoon. He has stated that the incident had taken place in the courtyard near the door. He has further stated that his brother was taken to Kuru hospital from where he has referred to Ranchi. This witness has deposed that after the death of his brother, inquest report was prepared in which he had put his signature which was marked as Exhibit 1. In cross-examination, this witness has stated that when Nandu Baitha had called his brother outside, he also went after washing his hands. There was altercation going on and his sister-in-law (informant) had also come out in the courtyard. He has stated that since incident took place all of a sudden, he did not get time to save his brother. He has also stated that on hearing the cry of alarm, several persons had assembled. This witness has deposed that the police station is situated at a distance of about 1 km. from the house.

8. **P.W. 4** – Balram Yadav is the father of the informant who had come to the matrimonial house of his daughter to take back his daughter. He has stated that all the inmates of the house were having dinner and

about 5-7 minutes ago, the accused persons had come to discuss about some monetary transactions. He has also stated that after such discussion all had left and when he was having dinner Nandu Baitha came and told his son-in-law that Dhaneshwar is calling him outside. On hearing this, everyone had come out and had seen that Nandu and Dhaneshwar had caught hold of the deceased and Karu Paswan was assaulting him with Tangi. He has stated that his son-in-law was taken to the government hospital from where he was referred to RIMS, Ranchi. He has further stated that during the course of treatment, his son-in-law died. He has also stated that the bulb was burning in the light of which he identified the appellants. This witness is also a witness to the inquest report and has proved his signature on it which has been marked as Exhibit 1/1. In cross-examination, he has deposed that it was a moon lit light and a bulb was also burning. He has also stated that there was a bulb in the courtyard also. When the accused called his son-in-law, he was having his meal. He has further stated that he has left his meal and followed them outside. He knew the accused from before. He has also stated that there was no discussion going on about money when the incident had occurred. He has also stated that Karu Paswan came and after giving assault with Tangi left the place of occurrence.

9. **P.W. 5** – Dr. Aman Kumar was posted on 03.08.2009 as an Assistant Professor, Department of Forensic Medicine, RIMS, Ranchi and on the same day he conducted autopsy on the body of Rambilash Yadav and had found the following injuries:

“8 cm long with 6 stitches over right perito frontal region of head and anterior part of which in the mid line.

Internal: There is difuse contusion of both sided temporo perito frontal scalp and crack fracture of right perieto frontal bone measuring 10 cm long. There is contusion of brain and presence of sub dural blood and blood clot on both sides of brain with laceration of brain in right parieto frontal lob and presence of blood and blood clot in cranial cavity.”

10. This witness has opined that all the injuries were ante mortem in nature and internal injuries were caused by hard and blunt substance. Death was on account of head injuries. This witness has proved the Post Mortem report which has been marked as Exhibit 2.

11. **P.W. 6** – Jitan Mahto did not support the prosecution case and was declared hostile by the prosecution.

12. **P.W. 7** – Anjani Kumar is the Investigating Officer who was posted as an Officer Incharge at Kuru Police Station on 02.08.2009. This witness has disclosed that on receiving information about the incident, he proceeded to Dhobi tola where he recorded the Fard Bayan of Sarita Devi. This witness has proved the Fard Bayan which has been marked as Exhibit 3 and his signature on the formal FIR which has been marked as Exhibit 4. He had taken the re-statement of the informant, the statement of the witnesses and inspected the place of occurrence. He has described the place of occurrence which is the tiled house of the deceased Rambilash Yadav. In cross-examination, he has stated that he has not taken the statement of Rambilash Yadav. He has also not gone to RIMS during the course of investigation. He has also stated that the witnesses during investigation disclosed about the bulbs and torch.

13. The accused persons were put to the incriminating circumstances emanating from the prosecution case under Section 313 of Cr.P.C. to which they denied to have taken part in the occurrence.

14. Mr. Lalit Yadav, learned counsel for the appellant in Criminal Appeal (DB) No. 1112 of 2012 has submitted that the prosecution has miserably failed to prove the case against the said appellant. He has submitted that there are several discrepancies in the evidence of P.W. 1, P.W. 2, P.W. 3 and P.W. 4. Learned counsel submits that in the Fard Bayan, the incident is described to have taken place inside the house, but in course of evidence such fact has been diluted and it has been stated that the incident had taken place in the courtyard. It has further been stated that so far as the appellant in Cr. Appeal D.B. No. 1112 of 2012 is concerned, there is no overt act attributed against him, save and except the fact that an amount was demanded from the deceased Rambilash Yadav. It has been stated that the main allegations have been levelled against Karu Paswan who is said to have inflicted Tangi blow on the head of the deceased Rambilash Yadav. He further submitted that the prosecution has failed to bring on record any motive, so far as the appellant is concerned, as the motive can be attributed to Dhaneshwar

Paswan who had taken an amount of Rs. 3,000/- from the deceased Rambilash Yadav, but in spite of the request made by the deceased, the amount was not returned. On such parameters, learned counsel for the appellant – Nandu Baitha submits that the appellant of Cr. Appeal DB No. 1112 of 2012 deserves to be acquitted from the charges levelled against him.

15. Mr. Girish Mohan Singh, learned amicus curiae in Cr. Appeal Nos. 396 of 2013 and 36 of 2013 has basically reiterated what has been stated by Mr. Lalit Yadav, learned counsel appearing for the appellant in Cr. Appeal No. 1112 of 2012. He has added further by stating that identification of the appellants is doubtful in view of the fact that the incident had taken place at night and only a lamp was burning which makes the identification difficult. It has been stated that the prosecution has tried to develop its case in view of the evidence of P.W. 4, who has stated that a bulb was burning inside the house as well as in the courtyard, but the same was contrary to the FIR as well as the evidence of the other material witnesses. He thus submits that since the identification of the appellants itself is doubtful, they deserve to be acquitted from the charges levelled against them.

16. Mr. Shekhar Sinha, learned A.P.P. in all the appeals has opposed the prayer and has stated that some discrepancies are bound to appear, but the same has to be considered in the context of the evidence led by the prosecution. It has been stated that P.W. 1, P.W. 2, P.W. 3, and P.W. 4 have consistently stated about entry of the appellants inside the courtyard of the deceased and on inducement, deceased was taken out from the house by Nandu Baitha and thereafter Dhaneshwar Paswan and Nandu Baitha had caught hold of the deceased and the fatal blow was given by Karu Paswan. Learned A.P.P. further submits that although, P.W. 1, P.W. 2, P.W. 3 and P.W. 4 are related to the deceased, but that by itself would not dilute the prosecution case as there appears to be consistency in their evidence with respect to the manner of assault as well as the other factors regarding the presence of other family members which has been duly supported in the evidence of other witnesses. He therefore prays that the present appeal be dismissed.

17. We have considered the submissions of both the parties and have also gone through the Lower Court Records.

18. It appears that the prosecution has produced several eye-witnesses to the occurrence being P.W. 1, P.W. 2, P.W. 3 and P.W. 4. P.W. 1 is the 10 year old daughter of the deceased Rambilash Yadav, who has clearly deposed about Dhaneshwar Paswan and Nandu Baitha holding her father and Karu Paswan giving a blow by a Tangi which subsequently resulted in his death. In fact, P.W. Nos. 1, 2, 3 & 4 have consistently stated about the fact regarding Dhaneshwar Paswan and Nandu Baitha catching hold of the deceased while Karu Paswan was giving the fatal blow. No doubt it is true that some discrepancies have come to the fore with respect to the evidence of the material witnesses, but the same is quite natural, considering the fact that the accused had entered into the house at night and without any provocation, the deceased was suddenly done to death by the accused persons as also without there being any appropriate motive or reasons for the same. The evidence of P.W. 1 as discussed above has been duly supported by the wife of the deceased, who has stated about an amount of Rs. 3,000/- which was given to Dhaneshwar Paswan and subsequently a huge amount was demanded from the deceased. P.W. 3 - Sukhbilas Yadav is the brother of the deceased who is also an eye-witness and who has supported the prosecution case. So far as the P.W. 4 is concerned, he is father of the informant, who has stated about the presence of bulbs in the courtyard as well as inside the house to substantiate the contention that there was sufficient light to identify the accused persons. Such development in the prosecution case by P.W. 4 cannot be taken into consideration because of the fact that it was the matrimonial house of his daughter and therefore, he must be unaware of the entire topography of the place which includes the presence of bulbs or not. But the fact remains that the other witnesses have consistently stated about the lamp burning and informant having a torch in her hand when the inmates of the house were having dinner. The defence has failed to elicit any major contradictions in the evidences of P.W. Nos. 1, 2, 3 & 4 with respect to non-identification of the appellants. The witnesses of the prosecution

appears to be natural and have merely stated what has been witnessed by them. The defence has therefore failed to make a dent with respect to the specific identification of the appellants and specific role played by each of them. Although the main blow upon the deceased has been attributed to the appellant Karu Paswan but Dhaneshwar Paswan and Nandu Baitha had caught hold of the deceased and prior to the same it has come in the evidence of the witnesses that Nandu Baitha on the inducement and belief that Dhaneshwar Paswan will return back the amount of Rs. 3,000/- taken from him had managed to get the deceased in the courtyard, where the incident of assault had taken place.

19. Therefore, the appellant Dhaneshwar Paswan and Nandu Baitha had acted in furtherance of their common intention and Karu Paswan having Tangi in his hand had given the fatal blow and the entire sequence of occurrence shows that it was a preconceived and preplanned effort on the part of the accused persons to do away with the life of Rambilas Yadav. The ocular evidence has also been duly supported by the medical evidence in which the internal injuries have been opined to have been possible being caused by Tangi.

20. In view of the discussions made hereinabove, therefore, we do not find any reason to entertain these appeals, which are hereby dismissed.

21. Pending I.A. also stands disposed of.

(Rongon Mukhopadhyay, J.)

(Rajesh Kumar, J.)

Jharkhand High Court at Ranchi
The 5th day of December, 2018
R. Shekhar/NAFR/Cp. 3