

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (D.B.) No.88 of 1997

1. Rajendra Sahu, son of Late Chamra Sahu

2. Balkishun Sahu, son of Late Lothea Sahu

Both residents of village Sonemer, P.S. Basia, District Gumla.

----- Appellants

Versus

The State of Jharkhand

-----Respondent

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellants : Mr. Hemant Kumar Shikarwar, Adv.

For the State : Mrs. Nehala Sharmin, Spl.P.P.

CAV on 12.06.2024

Pronounced on 09/09/2024

JUDGMENT

Per R. Mukhopadhyay, J.

1. Heard Mr. Hemant Kumar Shikarwar, learned counsel appearing for the appellants and Mrs. Nehala Sharmin, learned Spl.P.P.

2. This Appeal is directed against the judgment and order of conviction and sentence dated 03.04.1997 (sentence passed on 04.04.1997) passed by Shri Gangadhar, learned 1st Additional Sessions Judge, Gumla in Sessions Trial No.85 of 1990 whereby and whereunder the appellants have been convicted for the offences punishable under Sections 302/34 of the I.P.C. and have been sentenced to undergo imprisonment for life.

3. The Fardbeyan of Prabhu Sahay Guria was recorded on 28.12.1989 at Basia Referral Hospital wherein it has been stated that he is a retired Jamadar of Bihar Military Police and he had come to visit his home. He has stated that on 27.12.1989 a fair was held in the village and several persons had gone to see the fair. His

son and daughter-in-law had also gone to the market. He was in his house when at around 6:45 pm the village Choukidar Fetu Oraon had raised an alarm that a person has been killed by someone and his body has been dumped near the well adjacent to the house of Julius Tete. The informant and several villagers rushed to the spot and found the son of the informant Biksal Guria lying unconscious in an injured condition. There was a stone nearby which was perhaps used in smashing the head of Biksal Guria. The son of the informant was taken by the villagers to Basia referral hospital, but his son succumbed to his injuries. It has been alleged that the villagers had committed the murder of the son of the informant. There was a litigation going on from 1984 between the informant and Rajendra Sao, Ranjit Sao and Balkrishna Sao, which was recently decided in favour of the informant and he had full belief that these persons had committed the murder of his son.

4. Based on the aforesaid allegations, Basia P.S. Case No. 61 of 1989 was instituted against the accused persons. On completion of investigation, charge sheet was submitted and after cognizance was taken, the case was committed to the court of sessions where it was registered as S.T. No. 85 of 1990. Charge was framed against the accused under Section 302/34 IPC which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as 10 witnesses in support of its case.

6. PW 1 Dr Mrityunjay Saraogi was posted as a Civil Assistant Surgeon at Sadar Hospital, Gumla and on 28.12.1989 he had conducted autopsy on the dead body of Biksal Guria and had found the following injuries :-

- (i) Bruise over right temporal region, 3 inches in diameter, with sub-dural haematoma present in the right temporal region.
- (ii) Incised wound over right frontal region, size 2"x1"

scalp deep.

- (iii) Incised wound over right frontal region; one inch above injury no.(ii); size 2"x1"x scalp deep.
- (iv) Lacerated wound over right back of temporal region size 1 ½" x 1" x ½".
- (v) Incised wound over right ear-lobule; size 1 ½" x ½" x ¼".
- (vi) Incised wound over the right side of the chin, size 1 ½" x ½" x ¼".

Injury No.(i) was opined to be grievous in nature and the rest of the injuries were simple. Injury No.(i) and (iv) were caused by hard and blunt substance, while rest of the injuries were caused by some sharp weapons. All the injuries were anti-mortem in nature. The post mortem report has been proved and marked as Exhibit-1.

7. PW 2 Mangal Guria has stated that the incident occurred on a Wednesday about eight-nine months back. He had gone to Kumhari market and Biksal Guria as well as the four accused had also gone there. He had returned home before sunset and thereafter he had stayed at his house. When he had started for home Biksal Guria and the four accused were in the market. After sunset when he heard some commotion, he had come out of his house and heard that some scuffle is going on in front of the village. When he rushed to the place of occurrence, he had seen Biksal Guria lying dead and blood was oozing out from his injury on the head. A blood stained stone was lying besides the body. He has stated that Biksal Guria was taken home and he was already dead by then. He was later on taken to the hospital. The accused persons were not present in the crowd of villagers who had assembled. There was a previous enmity between the father of Biksal Guria and the accused persons and a few days prior to the occurrence, the decision of the court came which was in favour of Prabhu Sahai Guria.

In cross-examination, he has deposed that his statement was not recorded by the Police. The accused persons had not threatened Prabhu Sahai Guria in his presence. He had reached the place of occurrence after 10 minutes from the time the commotion started. He had never earlier disclosed his presence in Kumhari market to anyone.

8. PW 3 Fetu Oraon is the Choukidar of Sonmer village and on the fateful day his duty was at Kumhari market and in the fair. He had seen the deceased as well as the accused in the market. After duty hours, he was returning home and when he reached the turning near Surajpur locality, he had found a cycle kept on its stand besides the road. There was a head of a goat tied with a rope in the carrier of the cycle. Thrice he had shouted to draw the attention of the owner of the cycle, but when there was no response, he took the cycle to his house. When he reached near his village, he found a person lying on the road but at that point of time he could not recognize the said person. At home he stated about the incident to his brother and uncle and also asked Etwa Oraon to accompany him to the said place. When he and Etwa Oraon went to the said place with a lamp, his brother disclosed that the person lying on the ground is Biksal Guria. He thereafter raised an alarm and several persons including Prabhu Sahai Guria arrived at the said place. Biksal Guria was in an injured state and he was taken home after which his brother Das Guria arranged for a conveyance and he was taken to the hospital where he died. He has stated that Biksal Guria and the accused persons had already left the fair by the time he was leaving the fair. One Mahabir Oraon of the village had stated that the cycle perhaps belonged to Rajendra Sao. He has identified his signature on the seizure list of the cycle which has been marked as Exhibit-2.

In cross-examination, he has deposed that he had taken the cycle to the police station and Prabhu Sahay Guria and others had accompanied him. When he was going home the road was

lonely. The house of Julius Tete was just in front of the place where Biksal was lying. He had scolded and abused the person lying on the ground and thereafter he had left for his home. On hearing his sound the sister of Julius Tete namely Rejina Tete had come out and she had stated that she does not know anything about the incident. When he left for home, Rejina also had left for her house. The House of Prabhu Sahay Guria is at a distance of 100 yards from his house. On hearing his cry of alarm, his uncle Sukhu Oraon had come followed by Prabhu Sahay Guria, Mangal Guria and Manohar Kharia. He had not stated before the Police that Biksal Guria and the accused persons had left the fair before him.

9. PW 4 Rejina Tete has stated that on the date of the incident it was getting dark and she was in her house. From inside the house, she saw at a distance of 10-15 yards Pal Sao, Ranjit Sao, Balkisun Sao and Gaur Sao chasing Biksal Guria and thereafter assaulting him with stone. They had thereafter assaulted him with a Tangi and finally with a big stone crushed his head. She, out of fear, kept silent and did not even disclose about the incident to anyone at night, but in the morning she had stated about the incident to the villagers. She had given a similar statement to the Magistrate.

In cross-examination she has deposed that at the time of the incident there was no one else in the house. When the accused persons had fled away, she came out of her house and stayed near Biksal Guria till the Choukidar and Prabhu Sahay Guria had come. Several other villages had come and on being asked she had disclosed about the four accused fleeing away after committing the assault. The Fardbeyan of Prabhu Sahay Guria was recorded by the Police in her presence. The Police had also recorded her statement in which she had named all the four accused persons. After Biksal Guria was cremated, the police had again recorded her statement in which she had disclosed about the manner of occurrence to them. She has deposed that Julius Tete is

her cousin brother who had also disclosed to Prabhu Sahay Guria and the Choukidar the name of the assailants. It is a fact that there is a land dispute between Julius Tete and Pal Sao and Rajendra Sao.

10. PW 5 Julius Tete has stated that on the day when Biksal Guria was murdered, he was inside his house and when the Choukidar raised an alarm, he rushed outside and went near the body. He saw Biksal Guria lying in an injured condition and several villagers had assembled near him. The accused persons had threatened Prabhu Sahay Guria of murdering him and his family members.

11. PW 6 Manohar Kharia has stated that he had gone to attend Kumhari fair and in the evening he was returning home. Darkness was descending. On return he could not find one of his bullocks and he went towards Tengadi in search of it, but it could not be found and as he was returning, on the road he found Rajendra Sao, Balkishun Sao, Pal Sao and Ranjit Sao assaulting Biksal Guria with Tangi, Lathi and stones. He, out of fear, went home through a different route. He has proved his signature in his 164 CrPC statement which has been marked as Exhibit-3.

In cross-examination he has deposed that he did not disclose about the incident to any of his family members. When the body of Biksal was taken to his house, he had disclosed that all the four accused had committed the murder. The incident of assault had taken place at a distance of 20 yards from the house of Rejina Tete. Adjacent to the house of Rejina are the houses of Suna Oraon, Bandhan Oraon, Bhola Lohra, Matha Kharia, Rori Kharia and others. He had not called out to the assailants. First of all, he had disclosed before the Police about the assault committed by the accused persons.

12. PW 7 Das Guria is the brother of Biksal Guria, who has stated that on 27.12.1989 several persons of the village had gone to visit the market and the fair. He had seen the accused persons

slaughtering goats and selling the meat. His brother Biksal Guria was employed in Bihar Military Police. Biksal Guria had also gone to the market. He has stated that Biksal Guria was returning home on foot and he had also left the market at 5:30 pm. When he came near the village, he saw a crowd having assembled on the road and his brother was seen lying on the ground in an injured condition. He was being taken to the hospital but on the way he died. The dead body was sent by the Police for post-mortem to Sadar Hospital, Gumla. When he returned from Gumla, Rejina Khariain, Manohar Tete and Bahiyar Oraon had disclosed to him that the accused persons had committed the murder of Biksal Guria. He has stated that there is a case going on from before between the two sides and a case of assault was also instituted in which he has been acquitted a month prior to the incident. The bicycle which was found by the Choukidar Fetu Oraon in an abandoned condition, belonged to Rajendra Sao.

In cross-examination he has deposed that he had stated before the Police about the disclosure made before him by Rejina Khariain, Manohar Tete and Bahiyar Oraon that the accused persons had committed the murder of Biksal Guria.

13. PW 8 Sadhwa Singh has proved the formal F.I.R. which has been marked as Exhibit-4.

14. PW 9 Prabhu Sahay Guria is the informant who has stated that Biksal Guria was murdered on 27.12.1989. He had come home for Christmas and on the date of the incident Biksal Guria, Das Guria and his daughter-in-law had gone to attend Kumhari Bazaar and a fair which was being held. He was in his house when at around 6:45 pm Choukidar Fetu Oraon had come and disclosed that a person is lying in an injured condition in front of the house of Reji Khariain. He thereafter went alone to the said place and in Torchlight identified the said person to be his son Biksal Guria, who was in an unconscious state lying in a pool of blood. When he raised an alarm, several persons assembled who

took Biksal to his house and thereafter to Basia Referral Hospital, where doctors declared him dead. He has stated that the accused persons used to regularly threaten his family. He has proved his signature in the Fardbeyan which has been marked as Exhibit-3/A. When in the evening he had returned home, Police had already reached and in presence of the Police, Rajo Khariain and Manohar Kharia had disclosed to him about the accused persons committing the murder of Biksal Guria.

In cross-examination he has deposed that the Police had come in the next morning. When the Police had reached the hospital, Rejina Khariain and Manohar Khariya had not yet reached there. On the next day, in the evening Police had questioned Rejina Khariain and Manohar Kharia in his presence, but he could not grasp what they had said because of his mental condition. He had stated before the Police that Rejina Khariain and Manohar Khariya had disclosed that the accused persons had committed the murder of Biksal Guria.

15. PW 10 Chathu Thakur was posted as a Sub-Inspector in Basia PS and on 28.12.1989 he had received an OD slip from Basia Referral Hospital. On the basis of the OD slip, he had gone to the hospital and recorded the Fardbeyan of Prabhu Sahai Guria. He has proved the Fardbeyan which has been marked as Exhibit-4. He has proved the inquest report which has been marked as Exhibit - 5. He had recorded the restatement of the informant. Due to the absence of the officer in-charge, he had taken over the investigation of the case. He had inspected the place of occurrence which is an unmetalled road between Sonmer and Kumhari fair. About 100 yards to the south of the place of occurrence is the house of Rajendra Sao and in the southwest part at about 60-70 yards distance the house of Prabhu Sahay Guria is located. About 125 yards from the place of occurrence the house of Fetu Oraon is situated. He had seized blood stained soil and a stone from the place of occurrence. He has proved the seizure list which has been

marked as Exhibit-6. He had recorded the statement of the witnesses and had also obtained the post-mortem report. On 20.1.1990 he had handed over the investigation to the officer in-charge on account of his transfer.

In cross-examination, he has deposed that Fetu Oraon did not inform the police station at night. He had recorded the restatement of the informant in the hospital, but the informant had never stated before him that Rejina and Manohar Khariya had disclosed about the accused persons committing the murder of Biksal Guria. He had also not stated that he had gone with the torch to the place of occurrence. He had not conducted a test identification parade of the bicycle. The witness Rejina Tete had stated that the accused persons had assaulted Biksal Guria with stone and after assaulting him with Tangi, had smashed his head with a stone. The Witness Manohar Khariya had stated about the assault committed with Tangi and stone.

16. The statements of the accused were recorded under Section 313 CrPC, in which they have denied their complicity in the murder.

17. It has been submitted by Mr. H.K. Shikarwar, learned counsel for the appellants that there are no eye witnesses to the occurrence. P.W. 4 and P.W. 6 have developed their story in order to falsely implicate the appellants. If at all they were the witnesses to the murder, it is indeed surprising as to why such facts have not surfaced in the Fardbeyan. Learned counsel has submitted that the evidence of the witnesses contradicts each other and therefore the appellants deserve to be acquitted from the charges leveled against them.

18. Mrs. Nehala Sharmin, learned Special P.P. has primarily relied upon the evidence of P.W.4 and P.W.6 who, according to her, are the eyewitnesses and their evidence has not been shaken by the defence.

19. We have heard the learned counsel for the respective parties and have also perused the trial court records.

20. The Fardbeyan of the informant seems to cast suspicion upon the appellants for having committed the murder of Biksal Guria on account of previous enmity. The Fardbeyan does not disclose about any eyewitness to the occurrence. Subsequently however, Rejina Tete and Manohar Kharia have projected themselves as eyewitnesses. Rejina Tete has been examined as P.W. 4 and she has stated about witnessing the entire incident from inside the house. It was winter and darkness had descended when the assault took place. As per PW 4, she was alone in the house, but this fact has been contradicted by her brother Julius Tete, who has been examined as PW 5. He has stated that he was in the house and had rushed out when the chowkidar Fetu Oraon had raised an alarm. PW 5 has not stated about PW 4 being present in the house or having witnessed the murder. Her cross-examination further depicts that when the appellants had fled away, she had come out of the house and had stayed near Biksal Guria till the time chowkidar Fetu Oraon and Prabhu Sahay Guria had not come. However, PW 9 (informant) has not stated about the presence of PW 4 at the place of occurrence when he had gone. PW 9, on being informed, had gone with a torch light to the place of occurrence where he saw his son in a badly injured condition. No one else were present at the place of occurrence and the villagers had gathered when he had raised an alarm. It therefore clearly transpires that PW 4 cannot be designated to be an eyewitness in view of the apparent contradictions which has surfaced in her testimony. The other eyewitness is Manohar Kharia (PW 6) who happens to be a chance witness. He was searching for his bullocks when he had seen the incident of assault. His evidence reveals that the place of occurrence was surrounded by several houses but none of the inmates except PW 4 have stated about witnessing the incident. PW 6 in his cross-examination has deposed that when the body of

Biksal was taken to his house he had disclosed about witnessing the incident committed by the appellants, but this fact does not find mention in the Fardbeyan. The informant (PW 9) had stated before the Police about the disclosure made by PW 4 and PW 6 regarding the identification of the assailants and the manner of assault but this fact has been contradicted by the investigating officer (PW 10) who has denied that PW 9 had ever stated so in his restatement. The evidence of PW 6 also suffers from grave infirmities and cannot be considered to be reliable and trustworthy. It would therefore be apparent that there are no eyewitnesses to the occurrence and the prosecution has propped up PW 4 and PW 6 as the eyewitnesses, but their status, as such, has been demolished by the defence.

21. We therefore on the basis of the discussions made here in above, set aside the judgment and order of conviction and sentence dated 3.4.1997 (sentence passed on 4.4.1997) passed by Sri Gangadhar, learned First Additional Sessions Judge, Gumla in S.T. No. 85/1990.

22. This appeal is allowed.

23. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Shamim/-