

Cr. Appeal (D.B.) No.126 of 1995

1. Bihari Oraon
2. Ghuran Oraon ----- Appellants
The State of Jharkhand Versus ----- Respondent

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellants : Mrs. Vani Kumari, Adv.
For the Respondent : Mr. Pankaj Kumar, P.P.

R.Mukhopadhyay, J. Heard Mrs. Vani Kumari, learned counsel appearing for the appellants and Mr. Pankaj Kumar, learned P.P.

2. So far as the appellant no.2 is concerned, an affidavit has been filed by the State from which it appears that appellant no.2 has died in the year 2010 itself and therefore this appeal has abated so far as the appellant no.2 is concerned.

3. This Appeal is directed against the judgment and order of conviction and sentence dated 02.09.1995 passed by Shri Shyam Kumar Mishra, Learned Additional Judicial Commissioner, Lohardaga in Sessions Trial No.71 of 1990 / 6 of 1990 whereby and whereunder the appellant has been convicted for the offence punishable under Sections 302/34 of the I.P.C. and has been sentenced to undergo rigorous imprisonment for life.

4. The prosecution case arises out of the First Information Report instituted by Punai Oraon wherein it has been stated that on 13.11.1989 he had gone to work in the potato field of Girdhari Oraon in the early morning and Ghuran Oraon as well as Bihari Oraon were working in the nearby field having Sabal, Lathi and Dhelforwa with them. It is alleged that at about 7 A.M. Girdhari Oraon came near the accused persons and there was some talk between them when Bihari Oraon had assaulted on the head of Girdhari Oraon with a Dhelfrwa as a result of which Girdhari Oraon fell down. When the informant tried to save Girdhari Oraon,

he was also assaulted by Bihari Oraon on his left arm. The informant on account of such assault fled away from the place of occurrence. It has been alleged that Ghuran Oraon was going towards north side and Mangra Oraon was coming after attending the call of nature and Mangra Oraon was conversing with the wife of Ghuran Oraon under a Pipal tree when both the accused persons variously armed had came and started assaulting Mangra Oraon with Lathi and Dhelforwa as a result of which Mangra Oraon died at the spot. The injured Girdhari Oraon was brought by the villagers to Lohardaga Hospital where he died. It has been alleged by the informant that the incident had taken place on account of a land dispute between the parties.

5. Based on the aforesaid allegations Senha P.S. Case No.74 of 1989 was instituted against Bihari Oraon and Ghuran Oraon for the offence under Sections 302/34 I.P.C. On completion of investigation, charge sheet was submitted against the accused persons and after cognizance was taken the case was committed to the court of sessions and registered as Sessions Trial No.71 of 1990. Charge was framed against the accused persons under Sections 302/34 I.P.C. which was read over and explained to them to which they pleaded not guilty and claimed to be tried.

6. The prosecution has examined as many as 11 witnesses in support of its case.

7. P.W. 1 Rajmani Devi has stated that the incident is of 1 and ½ years back at about 6 A.M. when she was in her residence at Jogna and Punai Oraon had rushed to her house and had disclosed that her father Girdhari Oraon was assaulted by Ghuran Oraon and Bihari Oraon with a Dhelforwa and Lathi. It was also disclosed by Punai Oraon that both the accused persons after the assault had fled away.

In cross-examination she has stated that on the date of incident Ghuran Oraon was cultivating his land which fell in his share and Bihari Oraon was also working in the said land. She has

stated that in her statement recorded by the Police she had not disclosed that Ghuran Oraon and Bihari Oraon had assaulted her father with a Dhelforwa and a lathi as disclosed to her by Punai Oraon.

8. P.W.2 Dhondho Orain has stated that on the date of incident she was in her house when Punai Oraon had come raising an alarm and had disclosed that Girdhari Oraon has been assaulted. Punai Oraon had also stated that Bihari Oraon and Ghuran Oraon had assaulted Girdhari Oraon as well as Mangra Oraon. She had gone to the field where she had seen her husband and Mangra Oraon lying on the ground.

In cross-examination she has stated that at the time of the incident she was in her house and Rajmani was also present with her. The statement was recorded by the Police and she had stated before the Police that there was a head injury on her husband.

9. P.W. 3 Ramdas Sao has stated that he was sowing potato in his field and his son Dhaneshwar Sao was also with him. Accused Ghuran Oraon and Bihari Oraon were in their field ploughing the land and Punai Oraon was also working in the land of Girdhari Oraon. He has stated that Girdhari Oraon had come to the field and there was a talk between Ghuran Oraon and Girdhari Oraon which was not heard by him and thereafter Bihari Oraon had assaulted Girdhari Oraon with a Dhelforwa on his head as a result of which Girdhari Oraon fell down. After Girdhari Oraon fell down, Ghuran Oraon and Bihari Oraon had indiscriminately assaulted him with Lathi and Dhelforwa. Bihari Oraon had assaulted Punai Oraon with a Dhelforwa which hit his left arm. In the meantime Ghuran and Bihari Oraon had also committed assault upon Mangra Oraon who was standing near the Pipal tree with Dhelforwa and Lathi and thereafter the accused persons had fled away.

In cross-examination he has stated that a partition has already been effected between Girdhari Oraon and Ghuran Oraon. In the statement before the Police he had not disclosed that there was an altercation going on between both the sides.

10. P.W.4 Ramdhani Oraon has stated that Punai Oraon had come to his house and disclosed that his father was assaulted by Bihari Oraon and Ghuran Oran and he had also disclosed about Mangra Oraon being assaulted by the accused persons when he was returning from the field. At this information when he had reached the field he had found Mangra Oraon already dead and his father namely Girdhari Oraon was slowly breathing. His father was taken to Lohardaga hospital by a Tempo where he died.

In cross-examination, he has deposed that Girdhari Oraon and Ghuran Oraon are own brothers and Bihari Oraon is the son of Ghuran Oraon.

11. P.W. 5 Punai Oraon is an eye witness to the occurrence who has stated that he was in the field of Girdhari Oraon and Ghuran Oraon as well as Bihari Oraon were ploughing their own fields. When Girdhari Oraon had come to the field there was some conversation between him and Ghuran Oraon and all of a sudden Bihari Oraon had assaulted Girdhari Oraon with a Dhelforwa. Ghuran Oraon who was having in his possession a Lathi had also assaulted Girdhari Oraon. When they rushed to the place of occurrence and tried to revive Girdhari Oraon, Bihari Oraon had attempted to make an assault on his head with a Dhelforwa which was somehow fended off with his left hand. He has also stated that Mangra Oraon was returning when near the Pipal tree he was assaulted by Bihari Oraon with a Dhelforwa and Ghuran Oraon assaulted with Lathi as a result of which Mangra Oraon fell down. He had rushed to the village and informed the incident to the son of Girdhari Oraon and an alarm being raised several villagers had assembled as a result of which the accused persons had fled away. He has also stated that Mangra Oraon had died at the place of

occurrence while Girdhari Oraon was in an unconscious state and though he was taken to Sadar Hospital, Lohardaga but on the way he had died.

In cross-examination he has stated that he regularly works in the field of Girdhari Oraon and in such context he had gone to the field. When he reached the field of Girdhari Oraon he had seen Bihari Oraon and Ghuran Oran working in their own fields. Girdhari Oraon had reached the place of Occurrence after half an hour. At the time of incident he had not raised any alarm and he was in the field from 6 A.M. to 7 A.M but in this intervening period of one hour nobody had come to the field of Girdhari Oraon.

12. P.W. 6 Dhaneshwar Prasad Sahu was also present in the field at 6.30 A.M. sowing potato and his father Ramdas Sao was also with him. At that point of time the accused persons namely Ghuran Oraon and Bihari Oraon were in their field and when Girdhari Oraon came he was assaulted by Bihari Oraon with a Dhelforwa and Ghuran Oraon with a plain stick. On account of the assault committed upon Girdhari Oraon he fell down on the ground at which Ghuran Oraon and Bihari Oraon indiscriminately assaulted him with a Lathi. When Punai Oraon arrived and tried to save the victim, he was also assaulted by Bihari Oraon with a Dhelforwa which struck his left arm. He has also stated that Mangra Oraon was coming from Koyal river and he was also assaulted by Bihari Oraon with a Dhelforwa and Ghuran Oraon with Lathi.

In cross-examination he has deposed that before he had reached the field Ghuran and Bihari Oraon were already in their field.

13. P.W. 7 Shankar Sahu and P.W. 8 Madan Sao have been tendered for cross-examination.

14. P.W. 9 Bandhain Orain is the wife of the deceased Mangra Oraon who has stated that while her husband was returning from the river after answering the call of nature he had

met with two accused persons who had fled away after assaulting Girdhari Oraon. Punai Oraon had disclosed that her husband was assaulted by Ghuran Oraon and Bihari Oraon and at this information when she went to the place of occurrence, she found her husband dead while the accused persons were fleeing away.

In cross-examination she has deposed that her statement was not recorded by the Police. She has further stated that earlier there was a quarrel between Girdhari Oraon and Ghuran Oraon. She does not know as to the reason for such quarrel which had occurred.

15. P.W.10 Dr. K. Kumar Kujur was posted as a Civil Assistant Surgeon at Sadar Hospital, Lohardaga and on 13.11.1989 he had examined Girdhari Oraon and had found the following injuries :-

A. External Injuries

- (1) Right penna lacerated.
- (2) Bleeding things both ears.
- (3) Triangular shaped cut injuries on occipital region on just side of the mid line left side $3\frac{1}{2}$ " x $2\frac{1}{2}$ ".
- (4) Incised (cut) injury vertically on occipital region on right side $1\frac{1}{2}$ " x $\frac{1}{4}$ " x upto the bone.

B. Internal Injuries

- (1) Under scalp clotted blood present. Brain matter pale. At the region of the occipital bone on both side of the head fractured. Right & left occipital brain matter lacerated.
- (2) Chest – No fracture of ribs
Heart – Right chamber full of blood, left chamber empty.
Lungs – Pale

Abdomen – Kidney congested stomach contains digested food about 200 miligrams. Urinary bladder empty.

He has opined that the injuries may be caused by hard and blunt substance may be 'Dhelforwa'. The cause of death was opined to be on account of brain injuries. He has proved the post-mortem report which has been marked as Ext.1.

On the same day he had conducted the post-mortem on Mangra Oraon and had found the following injuries :-

A. External Injuries

- (1) Left ear pinna lacerated.
- (2) A perforating injury back of the left ear.
- (3) Abrasion on the right side of parietal region on the head 1" x 3".

B. Internal Injuries

- (1) Underneath the scalp clotted blood present. Right parietal bones fractured. Brain matter is lacerated. Temporal bone is fractured & the brain matter at the area is lacerated. Left parietal region of the bone is fractured & brain matter lacerated at the area.
- (2) Chest – Stained with dry blood. No fracture of ribs.
- (3) Heart – Left and right chamber empty.
- (4) Abdomen – Digested food about 250 miligrams.
- (5) Spleen -Congested.
Kidney – Congested.
Bladder – Empty.

Cause of death was on account of cardio respiratory failure and caused by brain injuries. He has proved the postmortem report which has been marked as Ext.2.

16. P.W. 11 Shiv Dayal Singh was the Officer In-charge of Senha Police Station and on 13.11.1989 at about 8.30 A.M. the informant Punai Oraon had informed about the incident pursuant to which Senha P.S. Case No.74 of 1989 was registered. He has proved the Fardbeyan which is in his handwriting and bears his signature which has been marked as Ext.3. He had also inspected the place of occurrence, prepared the inquest report and sent the bodies for their post-mortem examination. He had also taken the statement of the witnesses. At the place of occurrence he had found a Dhelforwa and a blood stained Danda along with a Sabal which were seized and the said seizure list has been proved as Ext.4. He has also proved the seizure list with respect to blood stained earth which has been marked as Ext.4/1. The blood stained earth in front of the field of Ghuran Oraon was also seized and a seizure list was prepared which has been proved and marked as Ext.4/2. He had inspected the place of occurrence which is at village Jogna in the field of Girdhari Oraon and the accused persons.

In cross-examination he has stated that Punai Oraon in his statement had disclosed about the land dispute going on between the parties. There was no blood stain on Dhelforwa and Sabal though in Danda there was a presence of blood stain. The deceased Girdhari Oraon had an injury on his head for which he was treated at Senha Hospital. He cannot say as to under what circumstances Girdhari Oraon had sustained such injuries.

17. P.W. 12 Prem Kumar Gupta is the Judicial Magistrate 1st Class who had recorded the statement of Dhaneshwar Prasad Sahu and Ramdas Sahu under Section 164 Cr.P.C. which have been proved by him and marked as Ext.5 and 5/1.

18. It has been submitted by Mrs. Vani Kumari, learned counsel appearing for the appellant that though 12 witnesses have been examined only P.W.3, P.W.5 and P.W.6 are the eye-witnesses but their eye-witness accounts suffers from various contradictions. It has further been submitted that the incident was not premeditated and had occurred at the spur of the moment on account of an altercation between the appellant and the deceased Girdhari Oraon. Learned counsel has also submitted that the evidence of the witnesses suggest that the appellants were in their own field when Girdhari Oraon had come and the same seems to be the cause of the incident. Learned counsel submits that partition has already taken place between Girdhari Oraon and the accused persons as per the evidence of the witnesses. Mrs. Vani Kumari has also submitted that as per the evidence of P.W.11 the appellant no.2 had also sustained injuries and was treated in the hospital but no explanation has been put forward by the prosecution with respect to the injuries suffered by him. It has therefore been submitted that since the prosecution has miserably failed to prove his case against the appellants, the appellant no.1 deserves to be acquitted from the charges levelled against him.

19. Mr. Pankaj Kumar, learned P.P. has submitted that the evidence of P.W.3, P.W.5 and P.W.6 being the eye-witnesses are

consistent and believable. It has been submitted that a specific allegation has been levelled against the appellant no.1 of assaulting Girdhari Oraon as well as Mangra Oraon with a Dhelforwa and post-mortem report corroborates such allegation. It has also been submitted that even if it is accepted that the deceased Girdhari Oraon was assaulted on account of some hot discussion between Girdhari Oraon and the appellants, but so far as the assault on Mangra Oraon is concerned, the same appears to be unprovoked which further indicates the intention of the appellant in committing the murder of Girdhari Oraon and Mangra Oraon in a concerted fashion.

20. We have heard the learned counsel for the respective parties and have also perused the lower court records.

21. As per the First Information Report it was Girdhari Oraon who was initially assaulted by the accused persons with Dhelforwa and Lathi as a result of which he fell down on the ground and later on succumbed to his injuries at Sadar Hospital, Lohardaga. So far as Mangra Oraon is concerned, it appears that he was conversing with wife of one of the appellants beneath a Pipal tree while the appellants were fleeing away from the place of occurrence. They had also committed assault upon Mangra Oraon in an indiscriminate fashion which resulted in his death at the spot. The evidences of P.W.1 and P.W.2 reveal that it was Punai Oraon (P.W. 5) who was an eye-witness to the occurrence and who had disclosed about the role played by each of the appellants in committing assault upon the deceased persons. In fact the evidence of P.W.5 inspires confidence as the same appears to be consistent and has not exaggerated with respect to the act of assault against the deceased persons. P.W. 5 was already present at the place of occurrence and was working in the field of Girdhari Oraon when he had witnessed the assault committed by the accused persons upon Girdhari Oraon and subsequent thereto upon Mangra Oraon and both had died. P.W.3 and P.W.6 are also the eye-

witnesses to the occurrence who were present in the field prior to the incident having taken place and therefore the evidence of P.W.5 gets corroborated by the evidence of P.W.3 and P.W.6.

22. Although it has been stated by the learned counsel for the appellant that no explanation has been furnished by the prosecution with respect to the injury suffered by the appellant no.2 Ghuran Oraon as according to the Investigating Officer (P.W.11) Girdhari Oraon was admitted to a hospital at Lohardaga and was treated but that could not be a ground to doubt the case of the prosecution. As would appear from the evidence of P.W.5 an attempt with a Dhelforwa was also made upon him by the appellant no.1 which was fended off with his left hand and a tussle might have occurred which had resulted in the injury suffered by the appellant no.2. The post-mortem report also corroborates the manner of assault as it has been opined by the Doctor who conducted autopsy that hard and blunt substance like Dhelforwa and Lathi were used in committing murder of Girdhari Oraon and Mangra Oraon.

23. In view of the overwhelming materials available on record which clearly indicates the act of assault committed by the accused persons upon Girdhari Oraon and Mangra Oraon and that too unprovoked and which signifies the premeditated intention on the part of the accused persons in committing assault upon Girdhari Oraon and Mangra Oraon, we do not feel inclined to interfere in the impugned judgment and order of conviction and sentence dated 2.9.1995 passed by Shri Shyam Kumar Mishra, learned Additional Judicial Commissioner, Lohardaga in S.T. No.71 of 1990 / 6 of 1990 and consequently we dismiss this appeal.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

*High Court of Jharkhand at Ranchi
Dated: 10th June 2024
Shamim/-*