

Criminal Appeal (D.B.) No. 31 of 2003
With
Criminal Appeal (D.B.) No. 160 of 2003

[Arising out of judgment of conviction dated 16.11.2002 and order of sentence dated 18.11.2002 passed by learned Additional District & Sessions Judge (Fast Track Court-II), Gumla in Sessions Trial No. 230 of 2000]

Criminal Appeal (D.B.) No. 31 of 2003

1. Raju Minz son of Sri Birsa Oraon
2. Ajit Oraon son of Late Somu Ekka
Both are residents of Village Sathkharia Tilaidih, P.S. Palkot,
District Gumla **Appellants**
--Versus--
The State of Jharkhand **Respondent**
With

Criminal Appeal (D.B.) No. 160 of 2003

Paremchand @ Tote Ekka @ Tete Ekka son of Jambu Oraon resident of Village Satkhari, Teliadiah, P.S. Palkot, District Gumla

.... **Appellant**
--Versus--

The State of Jharkhand **Respondent**

For the Appellants : Mr. A.K. Chaturvedi, Advocate
For the State : Ms. Vandana Bharti, A.P.P.
For the Informant : Mr. Sheo Shankar Kumar, Advocate

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 11.11.2024

Pronounced On: 19.11.2024

Per Gautam Kumar Choudhary, J. Both these appeals arise out of common judgment of conviction and sentence by which the appellants have been convicted and sentenced under Sections 302 and 394/34 of the IPC. Premchand @ Tete Ekka was further convicted under Section 411 of the IPC.

2. Prosecution case is about petty tea vendors becoming victim of road robbery while they were returning from a local market after daily sale.
3. As per the fardbeyan (Exhibit 1), recorded on 20.08.2000, informant (P.W. 5) along with his elder brother Sri Pradhan (deceased) on 19.08.2000

has gone for selling tea and snacks to Konkera market. At around 7:00 p.m., when they were returning with helper Eliazar Kullu, they were intercepted by three miscreants, one of them was having pistol in his hand and on point of it, they overpowered them. Eliazar Kullu somehow escaped from the place of occurrence. Elder brother of the informant was brutally assaulted by two of the miscreants. Informant was also assaulted with danda by the tall boy one among them. He handed over all his money and his HMT watch and the informant somehow, fled away to Village Konkera leaving behind his brother. When he returned with other co-villagers, he found his elder brother in a pool of blood and had died due to the injuries sustained by him. Name of the tall miscreant was Raju Minz and that of the others were Ajit Oraon and Premchand @ Tete Ekka. He knew all the three, as they used to frequent local market and about one and half year ago, had a scuffle with one Budhu Sao.

4. On the basis of the fardbeyan, Palkot P.S. Case No.31/2000 was registered under Sections 394 and 302 of the IPC against the appellants. Police on investigation found the case true and submitted charge sheet against the appellants who were put on trial for the offences under Section 302, 394/34 of the IPC. Premchand @ Tete Ekka was separately charged for offences under Section 411 of the IPC.

5. It is argued by learned counsel on behalf of the appellants that P.W. 2- Eliazar Kullu, who is said to be the eye witness to the incidence and was along with the deceased at the time of incidence, has not supported the prosecution case and was declared hostile and he did not identify the appellants to be present at the place of occurrence. Prosecution case rests on solitary account of Heera Pradhan, whose testimony suffers from vital contradiction and therefore, cannot be said to be wholly reliable. Although the incidence took place after the sun set at around 7:00 O' clock, but the source of light has not been disclosed in which the appellants were identified by the witness. It is specifically argued on behalf of appellants-Raju Minz and Ajit Oraon that as per the post-mortem examination report, all the injuries except injury no.VIII were caused by sharp cutting weapon. According to P.W. 5 (informant) these

appellants were not armed with sharp cutting weapon, but were having lathi in their hand and therefore, they cannot be said to have inflicted fatal blow on the deceased. Even if the testimony of P.W. 5 is accepted, no overt act with regard to offence under Section 302 of the IPC has been attributed against these appellants in Criminal Appeal (D.B.) No. 31 of 2003.

6. Learned A.P.P. has defended the judgment of conviction and sentence.

7. As per the FIR, the incidence of robbery took place in the evening at around 7:00 O' clock, and the fardbeyan was recorded in the next morning on 20.08.2000 at 6:30 in the morning. Promptness in lodging the FIR, rules out to a great extent improvement and developments being made in the FIR.

8. Informant- Heera Pradhan (P.W. 5) was returning in the evening after selling tea and snacks in the local market, when for a petty sum of Rs.100-125, both of them were accosted and assaulted by the appellants, who committed robbery. One of the co-accused inflicted indiscriminate injuries to the deceased resulting in his death. Informant was also injured in the same incidence, has been proved by the Doctor (P.W. 7) who examined him on 20.08.2000. The injuries sustained by him were simple in nature. The fact that this witness sustained injuries, lends credence to the prosecution version that he was present along with the deceased at the place of occurrence at the time of incidence. His testimony has remained undemolished in the cross-examination and there is no reason to disbelieve his account. There is no material on record to suggest that he was actuated by any motive to falsely implicate the accused persons in the incidence. I do not see any reason to disbelieve his account as his testimony is wholly reliable.

9. P.W. 2 who was also coming with the informant and his brother at the time of incidence, has supported the factum of incidence that they were intercepted by miscreants when they were returning from the market after completing their day's work. He has corroborated the testimony of the informant that both the brothers were assaulted by the

appellants and that he somehow fled away from there. These facts have not been controverted in the cross-examination, and therefore, his testimony cannot be discarded, only because he has been declared hostile on the point of identification. It is quite understandable that as he had fled immediately after the incidence, he could not identify the accused persons. This cannot raise doubt over the identification of the accused persons by the informant (P.W. 5) who has specifically named the appellants in the incidence. Further in the cross-examination at para 14 the informant (P.W. 5) has deposed that Raju Oraon had earlier assaulted Budhu Sao in the market place. Law is settled that non-holding of TIP cannot be held fatal to the prosecution. More so in the present case as when the appellants were named in the FIR, TIP being not held cannot have any bearing on the prosecution case. It has been held in *Latesh Vs. State of Maharashtra, 2018(3) SCC 66* that Test Identification Parade is not necessary when accused is known to witnesses.

10. Recovery of the HMT watch from one of the co-accused, the ownership of which has not been claimed by any of the accused persons, further supports the prosecution case of robbery being committed. Informant has candidly admitted that only one watch was placed for identification, this goes to show that P.W. 5 was not a tutored witness. This does not in any way diminish the evidential value of his testimony, rather lends further credence to it. When persons are put for identification, it is imperative requirement that the suspect should be placed with others to ensure the sanctity of identification. This will not apply in all cases when the stolen goods are placed for identification, as neither the accused nor any one else have claimed the said good was robbed in the incidence.

11. Brother of the informant died of the fatal injuries inflicted in the incidence is proved by the Doctor (P.W. 6) who conducted the post-mortem examination on dead body. Following ante mortem injuries were found on the dead body.

Rigor mortis present in both upper and lower limbs:

- i. Incised wound 2"x 1/2"x 1 1/2 "x Bone deep over left forehead/with

- fracture of frontal bone and laceration of meninges and brain matter with blood inside cranial cavity.
- ii. Incised wound $2\frac{1}{2}$ " \times $3/4$ " \times $1\frac{1}{2}$ " x Brain deep over occipital region. Fracture occipital with laceration of brain matter which was spraded outside through the wound.
 - iii. Bruise 3 " \times $3/4$ " \times 1 " over left side of temporal with fracture temporal and frontal bone.
 - iv. Incised wound 2 " \times 1 " \times $1\frac{1}{2}$ " x left lateral to left eye with fracture of frontal and Zygomatic bone.
 - v. Incised wound 4 " \times $1\frac{1}{2}$ " \times $1\frac{1}{2}$ " left side of chin fracture of left side of mendible.
 - vi. Incised wound 1 " \times $1\frac{1}{2}$ " \times $1/2$ " left side of lower leap cutting of muscles.
 - vii. Incised wound $1\frac{1}{2}$ " \times $1/2$ " over left ear in lower parts separate ear lobule into two parts.
 - viii. Bruise 4 " \times 1 " oblique left side of thigh.

Injury No.(viii) was caused by hard and blunt substance and other injuries were caused by sharp cutting weapons. Doctor opined that injury Nos. (i) to (v) were grievous in nature and (vi) to (viii) were simple in nature. Cause of death was due to hemorrhage and shock. Doctor has proved the postmortem report as Exhibit 4.

12. The injuries are extensive and demonstrates beyond any doubt that the assailants had intention to cause death which was committed in furtherance of common intention in committing robbery. Individual role of each of the appellant is not relevant as they have been charged under Section 302/34 of the IPC. Murder was committed during robbery and therefore each were equally liable for committing the offence of murder and robbery.

13. There is no infirmity in conviction and sentence under Section 302/34 and Section 394 of the IPC and the Judgment of conviction and sentence under these sections is upheld against all the appellants.

14. Looted watch was recovered from Premchand @ Tete Ekka @ Tote Ekka. A person cannot be held guilty both for the offence of committing

robbery and dishonestly retaining of stolen property, which can be corroborative evidence to the charge of robbery. As the charge under Section 394 of IPC is proved against him, therefore conviction under Section 411 of the IPC is not sustainable and is accordingly set aside.

With this modification in finding, both the Criminal Appeals stand dismissed.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 19th November, 2024

AFR/Anit