

LALLU MANJHI AND ANR.

v.

STATE OF JHARKHAND

JANUARY 7, 2003

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

Penal Code, 1860—Ss. 147 and 302/149—Murder—Prosecution—Sole eye witness—Improvement of his testimony during trial—Non-corroboration by medical evidence—Infirmities in investigation—Conviction by courts below—On appeal, held—Conviction not justified on the basis of evidence available.

Code of Criminal Procedure, 1973—S.313—Statement of accused—Recording of—Role of trial court—Held, it is obligatory on the part of trial court to examine the accused for the purpose of enabling him to personally explain the circumstances appearing against him—In absence of such opportunity prosecution evidence cannot be relied on for conviction.

Criminal Trial:

Sole witness—Reliability on—Held, in case of neither wholly reliable nor wholly unreliable sole witness, corroboration in material particulars by reliable testimony, direct or circumstantial, required—Evidence—Corroboration.

9 accused out of 10, including the appellants, were tried for offences u/ss 148 and 302 r/w 149 IPC. Prosecution case was that when PW9 and his elder brother were ploughing the field, all the 10 accused reached there and assaulted them. PW9 ran away to save his life crying for help, but no one came to their rescue. After sometime when he reached the place of occurrence he found his brother dead. The evidence of PW9, the sole eye witness, during the trial was in departure from his FIR version and police statement. PW9 admitted that there was a dispute between them and the accused, regarding the land which he and the deceased were ploughing. He produced order passed in proceedings u/s 145 Cr.P.C. whereby they were declared to be in possession of the property in dispute. For this, in his cross examination it was suggested that the order was *ex parte* passed when the accused were in jail regarding that incident. He stated that he

A was not in a position to produce any document showing possession or entitlement to the possession over the land.

B During investigation, site plan of occurrence was not prepared; samples of blood stained earth were not sent for chemical examination, no efforts were made to recover the weapon of offence; no witness of the locality was examined. Village Patwari and chowkidar were not examined. During trial, the statement u/s 313 was summed up into 5 questions.

C Trial Court convicted accused 1 to 4 and 9 u/ss 148 and 302/149 IPC and accused 5 to 8 u/s 147. Conviction was confirmed by High Court. Hence the appeal.

Allowing the appeal, the Court

D HELD: 1.1. The Law of Evidence does not require any particular number of witness to be examined in proof of a given fact. However, faced with the testimony of a single witness, the Court may classify the oral testimony into three categories, namely (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness.

E *Vadivelu Thevan etc. v. State of Madras*, AIR (1957) SC 614, referred to. [7-D-F]

F 1.2. The Court can neither place implicit reliance on nor totally discard the testimony of PW9 as it can neither be called wholly reliable nor wholly unreliable. He is a witness who could have been naturally present with his brother while ploughing the field. However, his testimony appears to have been substantially improved at the trial than what it was to begin with when the First Information Report of the incident was lodged. So far as the assault on the deceased is concerned, there is so much of chaff collected by him in his deposition that it becomes very difficult, almost impossible, to sift the grains of truth from out of the mass of chaff of falsehood and exaggerations. [7-G; 8-C]

H 2. Investigation in the case has been very defective. The Investigating Officer did not prepare any site plan of the place of occurrence. Samples

of blood stained earth were not sent for chemical examination. No effort seems to have been made to recover and seize any weapon of offence. No witness of the locality, who could have been present near the place of occurrence at the time of the incident, has been interrogated. It was the cultivation time and agriculturists or labourers busy ploughing the fields must have been present in neighbouring piece of land who could have deposed to as to the question and nature of possession over the land in dispute. The village Patwari and Chowkidhar would have been most material witnesses. Their interrogation and collection of entries in revenue papers would have revealed who was in actual possession of the land prior to the incident. The Court is just left in doubt guessing whether it was the complainant party in possession of the land illegally obstructed by the accused persons or whether the accused persons were in possession of the land which was sought to be trespassed upon by the deceased and his brother PW9 and the attempted trespass was sought to be prevented and pre-empted by the accused persons. [8-D-G]

3. The genesis or the root cause of the incident is not known. The most crucial question as to the factum of possession over the land in dispute immediately preceding the date of the incident cannot be determined and any specific finding in that regard arrived at. The version of the incident given by the sole eyewitness who is also an interested witness on account of his relationship with the deceased and being inimically disposed against the accused persons is highly exaggerated and not fully corroborated by medical evidence. The version of the incident as given in the Court is substantially in departure from the earlier version as contained and available in the First Information Report. Therefore, reliance cannot be placed on the sole testimony of PW9 for the purpose of recording the conviction of all the accused persons. [8-H; 9-A-B]

4. The manner in which the Trial Court has recorded the statements of the accused persons u/s 313 Cr.P.C. is far from satisfactory. It is obligatory on the part of the Trial Court to examine the accused for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him. If such opportunity is not afforded, the incriminating pieces of evidence available in the prosecution evidence cannot be relied on for the purpose of recording conviction of the accused persons. [9-C-D]

5. On the state of evidence specifically, the infirmities in the prosecution evidence and the investigation, the accused persons could not

A have been held guilty of the offences charged. The accused-appellants are acquitted of the charges framed against them. [9-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 15 of 2002.

B From the Judgment and Order dated 19.8.1996 of the Patna High Court in Crl. A. No. 45 of 1991 (R).

Mrs. Revathy Raghavan (A.C.), Ms. Shweta Garg and Rakesh Garg, for the Appellants.

C Gopal Prasad and S.K. Singh for the Respondent.

The Judgment of the Court was delivered by

D **R.C. LAHOTI, J.** Ten accused persons, namely, Chunnu (A-1), Lallu (A-2), Toro (A-3), Gurua (A-4), Surju (A-5), Sombari (A-6), Lakhi (A-7), Kapra (A-8), Chorey (A-9) and Suku (A-10) stood trial on charges under Sections 148 and 302 r/w 149 of the IPC for being members of an unlawful assembly armed with deadly weapons with the common object of committing murder of Suphal Hansda. The Sessions Court held the charges under Sections 148 and 302/149 IPC proved against five accused persons, namely, A-1 to A-4 and A-9. As against accused Nos. 5 to 8, the Trial Court considered it safe to record their conviction under Section 147 IPC only. Those held guilty under Section 302/149 IPC were sentenced to undergo imprisonment for life. A sentence of rigorous imprisonment for one year was inflicted under Section 148 of IPC. Both the sentences were directed to run concurrently. The accused Nos. 5 to 8, who are all women, were directed to be released on admonition under Section 3 of the Prohibition of Offenders Act.

F Vide order dated 19th June 1989, the trial of Suku Majhi was directed to be separated. Nine accused persons were tried in present proceedings. All the accused persons and the deceased, the complainant and the witnesses are tribals belonging to Majhi community.

G According to the FIR lodged by Mannu (PW-9) on 21.06.1987 at 2.00 PM, registered at P.S. Jadugoda, Mannu (PW-9) and his elder brother Suphal Hansda had gone to plough the field known as Murabil at about 6.00 AM. While they were ploughing the field, all the accused persons came and **H** surrounded them. The accused persons were armed with weapons like bows

and arrows, lathis and tangis. Accused Nos. 1, 2 & 9 dealt tangi blows on the deceased whereupon he fell down. Mannu, having seen the incident, ran away for his life raising hue and cry, but none intervened. All the accused persons left the place of occurrence and moved towards village Rajdhoha. At about midday the witness Mannu returned to the place of occurrence to find that his brother Suphal Hansda was already dead. The family members assembled. The Police had, by this time, reached the place of occurrence. Mohammed Soueb (PW-11) the S.H.O. took down the statement of Mannu on a piece of paper, which was got signed by Mannu and forwarded through the Village Chowkidhar to the Police Station and was registered as First Information Report of the incident. According to the FIR, the genesis of the dispute and the assault which had taken place on that day was the land and it was Kapra Majhain, the accused No. 8 who had collected all the accused persons for assaulting the deceased.

Here itself, it may be noted that though the names of all the accused persons are stated in the FIR, the overt act of assault on the deceased is attributed specifically to Chunnu, Lallu and Chorey (A-1, A-2 & A-9). No other accused is specifically alleged to have assaulted the deceased or anyone else. The only act attributed to Chunnu, Lallu and Chorey is of dealing blows on Suphal Hansda by tangi using its reverse side and no other accused is attributed with any specific overt act nor the use of any other weapon of offence with which the accused persons are alleged to have been armed, such as arrows and lathis. This is to be noted in particular because, as would be seen shortly hereinafter, the prosecution has tried to substantially improve its case during the course of investigation and then again during the course of trial.

At the trial, the prosecution examined in all 13 witnesses. The star witness is Mannu (PW-9) who is the sole eyewitness to the incident and at his instance the First Information Report of the incident was also recorded. The second set of witnesses consists of PWs. 1, 2, 3 & 5 who are the villagers who were ploughing another piece of land belonging to one Lakhani @ Lakhi situated at a distance of about one mile from the place of occurrence. When Mannu (PW-9) made good his escape and was passing by the side of the field of Lakhani, he met with these persons and these witnesses also saw the several accused persons armed with weapons coming from the side of the place of occurrence and shouting that they had already killed one and they would kill the other brother also. The third set of witnesses consists of PWs 6, 7 & 8 who reached the place of occurrence after receiving information of the incident

A having taken place and found Suphal Hansda lying dead at the place of occurrence. The fourth set of witnesses consists of formal or corroborative witnesses such as Doctor, the Investigating Officer and others.

B Post mortem examination on the dead body of Suphal Hansda was performed on 22.06.1987 at 11:45 a.m. by Dr. D.B. Sarangi (PW-4). He found the following injuries on the person of Suphal :-

- (i) fracture of left temporal and occipital bone;
- (ii) 3rd, 4th, 5th & 6th ribs of the left side of the chest were found fractured.

C Dr. Sarangi found cranial cavity containing clotted blood. Left lung was lacerated. Thoracic cavity contained six ounces of blood. In the opinion of Dr. Sarangi, the cause of death was injury No. 1. During cross-examination Dr. Sarangi stated that the injuries on the head were two in number. The injuries could not have been caused by a single blow.

D Even before stating what was deposed to by Mannu (PW-9) before the Trial Court, we cannot resist observing that his deposition is substantially in departure from the earliest version of the incident as contained in the First Information Report. Mannu has substantially improved his version of the incident. He stated that Chorey, Lallu & Chunnu were armed with Tangi.
E Gurua, Toro and Suku were armed with arrows and bows and Tenga, i.e. lathis. All other accused persons were armed with lathis. Having been assaulted by accused Nos. 1, 2 & 9, Suphal fell down on the ground whereafter the accused Gurua climbed upon the body of the victim and pressed his body hard against the ground. Presumably the fracture of the ribs is sought to be
F attributed by this witness to this overt act of accused Gurua. Mannu went on to say that the women accused also assaulted the deceased with lathis and their legs.

G During cross-examination Mannu (PW9) admitted that the piece of land over which the assault had taken place measures about 300 yards in length and about 100 yards in width. There was a dispute going on between the deceased and the accused persons over this land. The complainant claimed that his side had succeeded in legal proceedings upholding their entitlement to the land. This aspect of the case we will again revert to a little later. His attention was specifically invited to the First Information Report and his police statement and he admitted that the factum of accused Gurua having
H climbed on the body of the deceased and pressed the chest hard (resulting

into fracture of the four ribs) though stated by him earlier too but is not to be found mentioned either in the FIR or in his police statement. So is the case with lathi blows having been dealt by the women accused persons. A certified copy of the order dated 29.03.1988 passed by Sub-Divisional Magistrate in proceedings u/s 145 of Cr.P.C. has been produced in the Trial Court and marked as Exhibit-7. The present incident is dated 21.06.1987. It appears that the proceedings u/s 145 Cr.P.C. came to be decided *ex-parte*. The suggestion given to Mannu (PW-9) in his cross-examination by the defence is that when this incident had taken place and the accused persons were arrested and were in jail, the complainant party acted with haste and got the case decided resulting into an *ex-parte* order in their favour whereby they were declared to be in possession of the property in dispute on the date of the passing of the preliminary order. It is pertinent to note that no material is available on record to show the date on which the preliminary order was passed. The witness was asked whether he had produced during investigation or was in a position to produce even now any document consisting of revenue records or any receipt showing payment of land revenue of the land so as to show his possession or entitlement to possession over the land in dispute. The witness answered in the negative.

The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the Court may classify the oral testimony into three categories, namely (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness. {*See-Vadivelu Thevan etc. v. State of Madras*, AIR (1957) SC 614}.

In the case at hand, we can neither place implicit reliance on nor totally discard the testimony of Mannu (PW-9) as it can neither be called wholly reliable nor wholly unreliable. Mannu is a witness who could have been naturally present with his brother while ploughing the field. However, we find his testimony to have been substantially improved at the trial than what it was to begin with when the First Information Report of the incident was lodged. Though at the trial Mannu alleges all the 10 accused persons to have dealt blows with their respective weapons on the body of his brother Suphal Hansda, but that is certainly not correct. If 10 accused persons had dealt even

A one blow each, there would have been a minimum of 10 injuries on the person of the deceased. It is the specific case of Mannu that so far as the chest injuries (fracture of ribs) are concerned, it was the result of the accused Gurua having climbed upon the body of the deceased after he had fallen down and then pressed him against the ground. As the fracture of ribs is not accompanied by any apparent injury on the body, in all probability such

B injuries were not caused by any weapon. The injuries could have been caused either by pressing hard as alleged or even by forcefully pushing the deceased during the course of any scuffle. The deceased has suffered only two other injuries, which obviously were not caused by three persons. So far as the assault on the deceased is concerned, there is so much of chaff collected by

C Mannu (PW-9) in his deposition that it becomes very difficult, almost impossible, to sift the grains of truth from out of the mass of chaff of falsehood and exaggerations.

There is another very material aspect of the incident and we cannot resist observing that the investigation in the case has been very defective.

D The Investigating Officer did not prepare any site plan of the place of occurrence. Samples of blood stained earth were not sent for chemical examination. No effort seems to have been made to recover and seize any weapon of offence. No witness of the locality, who could have been present near the place of occurrence at the time of the incident, has been interrogated.

E It was the cultivation time and agriculturists or labourers busy ploughing the fields must have been present in neighbourhood. The witnesses referable to neighbouring piece of land could have deposed to as to the question and nature of possession over the land in dispute; as to whether it was cultivated previously and if so by whom whether the complainant party or the accused persons. The village Patwari and Chowkidhar would have been most material

F witnesses. Their interrogation and collection of entries in revenue papers would have revealed who was in actual possession of the land prior to the incident. The Court is just left in doubt guessing whether it was the complainant party in possession of the land illegally obstructed by the accused persons or whether the accused persons were in possession of the land which was sought

G to be trespassed upon by the deceased and his brother Mannu (PW-9) and the attempted trespass was sought to be prevented and pre-empted by the accused persons.

It is, therefore, clear that the genesis or the root cause of the incident is not known. The most crucial question as to the factum of possession over

H the land in dispute immediately preceding the date of the incident cannot be

determined and any specific finding in that regard arrived at. The version of the incident given by the sole eyewitness who is also an interested witness on account of his relationship with the deceased and being inimically disposed against the accused persons is highly exaggerated and not fully corroborated by medical evidence. The version of the incident as given in the Court is substantially in departure from the earlier version as contained and available in the First Information Report. We cannot, therefore, place reliance on the sole testimony of Mannu (PW-9) for the purpose of recording the conviction of all the accused persons.

Incidentally, it may also be stated that the manner in which the Trial Court has recorded the statements of the accused persons u/s 313 Cr.P.C. is far from satisfactory. The entire prosecution case running into very many details has been summed up into just 5 questions asked to each of the accused persons. It is obligatory on the part of the Trial Court to examine the accused for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him. If such opportunity is not afforded, the incriminating pieces of evidence available in the prosecution evidence cannot be relied on for the purpose of recording conviction of the accused persons.

All these aspects of the case, specially the infirmities in the prosecution evidence and the investigation, have not received the attention of the Trial Court as also the High Court. We are very clear in our mind that on the state of evidence available the accused persons could not have been held guilty of the offences charged.

The appeal is allowed. The judgment of the Trial Court as also of the High Court are set aside. The accused appellants are acquitted of the charges framed against them. The appellants shall be released forthwith if not required to be detained in connection with any other offence.

We place on record appreciation of valuable assistance rendered at the hearing by Ms. Shweta Garg Adv. Instructed by Mrs. Revathy Raghavan, Adv. who appeared as amicus.

K.K.T.

Appeal allowed.

THE JUDGE