

Cr. Appeal (DB) No. 46 of 1999 (R)

Against the judgment of conviction and order of sentence dated 29.01.1999 passed by Shri S.K. Mishra, learned Additional Sessions Judge, Seraikella in Sessions Trial No. 324 / 88.

1. Goda Singh Sardar				
2. Budheshwar Singh Sardar @ Budha	---	---	---	Appellants
	Versus			
The State of Bihar (Now Jharkhand)	---	---	---	Respondent

For the Appellant: Mr. Akhouri Awinash Kumar, Amicus Curiae
For the Resp.-State: Mr. Bhola Nath Ojha, A.P.P

PRESENT

Hon'ble Mr. Justice Ratnaker Bhengra
Hon'ble Mr. Justice Ambuj Nath

Reserved on: 13.12.2023**Pronounced on: 22 .12.2023**

Both the appellants Goda Singh Sardar and Budheshwar Singh Sardar @ Budha have filed this appeal against the judgment of conviction and order of sentence dated 29.01.1999, passed by Shri S.K. Mishra, Additional Sessions Judge, Seraikella in Sessions Trial No. 324 / 88 arising out of Nimdih P.S. Case No. 37/1987 corresponding to G.R. No. 70/1987, holding the appellants guilty of the offences under sections 302/34 of the Indian Penal Code and thereby sentencing them to undergo rigorous imprisonment for life.

2. Appellant-Gundi Singh Sardar died during the pendency of this appeal and as such, his appeal stood abated.

3. Prosecution case was instituted on the basis of the fardbeyan of the Informant Bhim Gorai, alleging therein that on 12.11.1987 at about 5.00 p.m., while he was returning from his field situated towards south of the village, appellant Goda Singh Sardar and his father Gundi Singh Sardar (deceased appellant) accosted him. Both Goda Singh Sardar and Gundi Singh Sardar were armed with bow and arrow. At the instruction of Gundi Singh Sardar, the appellant Goda Singh Sardar shot him by arrow, due to which, he sustained bow injury on his back and the arrow protruded from the front side of his stomach. On his alarm, several persons came there. It is alleged that occurrence has taken place due to the land dispute between the parties. Informant Bhim Gorai died during course of treatment.

3. After investigation, police found the occurrence to be true and submitted charge sheet against the appellants under section 302/34 of the Indian Penal Code. After cognizance, case was committed to the court of sessions by Shri Kiran Shankar,

learned Judicial Magistrate, Seraikella on 27.07.1988 as the case was exclusively triable by the session's court.

4. Charge was framed against the appellant on 20.07.1989. The content of the charge was explained to the appellants in Hindi, to which they pleaded not guilty and claimed to be tried.

5. In order to prove its case, prosecution has adduced both oral and documentary evidence.

6. Hardo Kanti Sarangi (P.W-1) is a formal witness.

Rajkumar Singh (P.W-2) is another formal witness.

Sitaram Pradhan (P.W-3) has proved the postmortem report, which is Ext.-2.

Ajay Gorai (P.W-4) is the son of the deceased. He has supported the prosecution case.

Jairam Gorai (P.W-5) has also supported the prosecution case. He has stated that the deceased has made dying declaration before him.

Godan Gorai (P.W-6) is a hearsay witness.

Bhuddu Gorai (P.W-7) is a hearsay witness.

Kirit Gorai (P.W-8) is another hearsay witness. However, he has stated that the deceased has made dying declaration before him.

Luddhu Gorai (P.W-9) has been tendered by the prosecution.

Purno Chandra Gorai (P.W-10) has also been tendered by the prosecution.

Dr. Shiv Shankar Prasad (P.W-11) is the doctor who has performed postmortem on the dead body of the deceased.

Prosecution has also adduced the F.I.R in evidence, which is Ext.-1 and the postmortem report, which is Ext.-2.

7. On the basis of both oral and documentary evidence available on the record, learned Additional Sessions Judge, Seraikella held the appellants guilty and sentenced them accordingly.

8. Statement of the appellants was recorded under section 313 Cr. P.C. Defence is the general denial of the occurrence and false implication.

9. Learned counsel for the appellants submitted that there is contradiction in the statement of the witnesses as to where fardebayan of the Informant / deceased was recorded. It was also submitted that the doctor who had treated the Informant / deceased at the first instance, has not been examined to show, whether the deceased was in proper frame of mind to make dying declaration. It was further submitted that the purported dying declaration of the deceased was contradicted by the findings in the postmortem report and the failure on the part of the prosecution to adduce inquest request of the deceased in evidence has further caused prejudice to the case of defence.

Accordingly, it was prayed that this appeal be allowed and the appellants be acquitted of the charges.

10. Mr. Bhola Nath Ojha, learned A.P.P for the State, submitted that all the prosecution witnesses have been consistent in their statement that the Informant / deceased had made dying declaration that the appellant Goda Singh Sardar had shot him by arrow and Gundi Singh Sardar (deceased appellant), appellant Budheshwar Singh Sardar and accused More Singh Sardar were also present there at the place of occurrence. It was submitted that the prosecution has been able to prove its case against the appellants beyond all reasonable doubts and as such, this appeal be dismissed.

11. Now, it has to be ascertained, whether the prosecution has been able to prove its case against the appellants beyond all reasonable doubts. In order to come to the aforesaid findings, we have to further examine,

- i. Whether the deceased Bhim Gorai died homicidal death and,
- ii. Whether appellants had caused homicidal death of the deceased.

12. Prosecution has not adduced the inquest report of the deceased in evidence.

Ajay Gorai (P.W-4), Jairam Gorai (P.W-5) and Kirit Gorai (P.W-8) have stated that they saw an arrow protruding from the stomach of the deceased Bhim Gorai.

Dr. Shiv Shankar Prasad (P.W-11) has conducted autopsy of the deceased Bhim Gorai on 14.11.1987 and found the following ante mortem injuries on the person of the deceased.

- i. 13 surgical stitches given on abdomen by left para median incision
- ii. On opening the abdominal cavity, four surgical stitches were given on the fundus of stomach.

Cause of death was due to shock and hemorrhage caused by the injuries to the stomach.

He has identified the postmortem report being prepared by him, which has been marked Ext.-2.

From perusal of the postmortem report (Ext.-2), it appears that the oral testimony of Dr. Shiv Shankar Prasad (P.W-11) regarding the nature of injury found on the person of the deceased and cause of death, fully corroborates his findings in the postmortem report.

13. From the aforesaid oral and documentary evidences, it is apparent that the deceased Bhim Gorai died due to the injury he sustained on his stomach which was neither self-inflicting, nor accidental. Accordingly, we come to the findings that the deceased Bhim Gorai died homicidal death.

14. It is the further case of the prosecution that the appellants had caused homicidal death of the deceased Bhim Gorai. There is no eyewitness to the occurrence. The entire prosecution case hinges upon the two dying declaration of the deceased Bhim Gorai.

i. The first dying declaration is his fardbeyan (Ext.-1) and

ii. The second dying declaration is oral dying declaration made by the deceased in presence of the witnesses.

15. Ajay Gorai (P.W-4) has stated that he saw an arrow piercing from the back side and protruding from the front side. His father Bhim Gorai (deceased) disclosed that the appellant Goda Singh Sardar had shot him by arrow at the instruction of the deceased appellant Gundi Singh Sardar. He also stated that Bhim Gorai told him that the appellant Budheshwar Singh Sardar and accused More Singh Sardar were also present at the place of occurrence. He has further stated that his father was brought to the Nimdih Hospital from where he was referred to TMH Hospital, Jamshedpur where he died.

16. Jairam Gorai (P.W-5) has stated that on the date of the occurrence, he was grazing his cattle in the nearby field when he heard hulla of Bhim Gorai. He went to the place of occurrence and saw an arrow pierced from the back side of Bhim Gorai and protruded from the front side of the stomach. Bhim Gorai told him that the appellant Goda Singh Sardar had shot him by arrow at the instruction of his father Gundi Singh Sardar and the appellant Bhudheshwar Singh Sardar and accused More Singh Sardar were also present there.

Jairam Goari (P.W-5), Godan Gorai (P.W-6) and Kirit Gorai (P.W-8) have also stated that the deceased had made dying declaration before them, stating that the appellant Goda Singh Sardar had shot him on the order of Gundi Singh Sardar and the appellant Budheshwar Singh Sardar and the accused More Singh Sardar were also present there. From perusal of the oral testimony of the prosecution witnesses, it appears that all these witnesses in unison have stated that the deceased had made dying declaration before him by stating that the appellant Goda Singh Sardar, on the order of the deceased appellant Gundi Singh Sardar, had shot an arrow on his back which protruded from his stomach. They have also stated that the deceased told them that the appellant Budheshwar Singh Sardar and accused More Singh Sardar were also present at the place of occurrence.

17. From perusal of the fardbeyan of the deceased, which is also his dying declaration, it transpires that the deceased in his fardbeyan-cum-dying declaration has not stated anything regarding the presence of the appellant Budheshwar Singh Sardar and accused More Singh Sardar at the place of occurrence during time of occurrence.

18. Medical evidence in this case is of paramount importance. The doctor, who has performed postmortem on the dead body of the deceased has not found any piercing injury at the back of the deceased. He has also stated that there were 13 stitches on the front side of the deceased and as per the doctor, the deceased died due to the injury sustained in the stomach. The findings in the postmortem report is contrary to the oral testimony of the prosecution witnesses and also the dying declaration of the deceased that he was shot from behind by the arrow which protruded from his stomach.

19. The doctor who had examined the deceased during course of treatment has not been examined. He was the best person to throw light on the nature of injury which the deceased had sustained for which he was treated at the first instance. Prosecution has not adduced the inquest report in evidence, which would have thrown light as to first hand opinion of the Investigating Officer regarding the cause of death of the deceased. Non-examination of the I.O has further caused prejudice to the prosecution case.

20. From the aforesaid facts and circumstances, we are of the opinion that apart from the so-called dying declaration of the deceased, there is no corroborative evidence on the record. The dying declaration made by the deceased in his fardbeyan and his earlier dying declaration said to have been made before the witnesses is also contrary to the fact that it does not disclose the presence of the appellant Budheshwar Singh Sardar at the place of occurrence.

Accordingly, we come to the findings that the appellants cannot be held guilty only on the basis of uncorroborative dying declaration of the deceased, coupled with the fact that there is contradiction in the medical evidence regarding the cause of death. We are inclined to give benefit of doubt to the appellants.

21. This appeal is allowed. The judgment of conviction and order of sentence passed by the learned Trial Court is set aside. Appellant-Budheshwar Singh Sardar @ Budha has already served his sentence and has been released. Appellant- Goda Singh Sardar is on bail. He along with his bailors are discharged from the liability towards the bail bonds.

Pending I.A., if any, stands disposed of.

(Ratnaker Bhengra, J)

(Ambuj Nath, J)