(2014) 09 JH CK 0029

Jharkhand High Court

Case No: Cr. Appeal (D.B.) Nos. 1746 and 1916 of 2004

Babudhan Murmu	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision: Sept. 3, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 300, 302, 304, 307, 325

Citation: (2014) 12 AJR 757

Hon'ble Judges: Rakesh Ranjan Prasad, J; Amitav Kumar Gupta, J

Bench: Division Bench

Advocate: P.K. Verma and Lakhan Sharma, Advocate for the Appellant; S.S. Choudhary, A.P.P, Advocate for the Respondent

Judgement

1. Both these appeals are directed against the judgment of conviction and order of sentence dated 18.9.2004 passed by 4th Additional Sessions Judge, F.T.C., Dumka in Sessions Case. No. 187 of 2002/329 of 2002 whereby and whereunder, learned Additional Sessions Judge having found the appellants guilty for committing murder of Thakur Murmu and Gidhi Hansda convicted them under Section 302/ 34 of the Indian Penal Code and also under Section 307/ 34 of the Indian Penal Code for making an attempt to commit murder of Thuthu Murmu and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs. 1,000/- for the offence under Section 302/ 34 of the Indian Penal Code and in default of payment of fine to undergo further simple imprisonment for three months and further to undergo rigorous imprisonment for five years and to pay a fine of Rs. 500/- for the offence under Section 307/ 34 of the Indian Penal Code and in default of payment of fine to undergo further simple imprisonment for three months. Both the sentences were ordered to run concurrently.

2. The case of the prosecution is that one Thuthu Murmu (P.W. 8) had convened a panchayati at 10:00 am on 18.8.2002 in the house of Village Pradhan- Dhena Tudu (P.W.

5) to settle the dispute which was there in between Thuthu Murmu (P.W. 8) and his son-appellant-Ruplal Murmu. In the said Panchayati, it was decided that the appellant-Ruplal Murmu, who had grown the crops, shall be harvesting the crops and thereafter the land would be divided in four parts. In the said panchayati, a fine of Rs. 101/- was imposed upon Thuthu Murmu (P.W. 8). When panchayati was over at about 7:00 pm, one Sukhu Murmu (P.W. 1), who had come from another village to participate in the panchayati, left the place for coming home. Thakur Murmu (deceased), Thuthu Murmu (P.W. 8), Gidhi Hansda (deceased), wife of Thuthu Murmu, and Luthura Hansda also accompanied Sukhu Murmu for taking him to his village. In that course, when they came near the house of Shibu Murmu at about 8 pm, they came across with the appellant-Ruplal Murmu (son of Thuthu Murmu), appellant-Babudhar Murmu and Barka Murmu who started abusing them. It resulted into scuffle amongst them. In that course, all the three persons started assaulting the informant''s father, uncle and aunt, namely, Thakur Murmu, Thuthu Murmu (P.W. 8) and Gidhi Hansda. Seeing them assaulting his father and others, the informant-Arbind Murmu (P.W. 7) tried to rescue them but Barka Murmu caught hold of him and felled him in the ground and tried to strangulate him. In that course, he stabbed Barka Murmu and fled away but saw the accused persons assaulting his father, uncle and aunt as a result of which they sustained injuries and felled down on the ground. Thereupon, they started searching the informant Arbind Murmu (P.W. 7) but he fled away from there. When the accused persons left that place, the informant came over there and did find hi father- Thakur Murmu dead, whereas he found his uncle- Thuthu Murmu an his aunt- Gidhi Hansda seriously injured.

On the next day i.e. on 19.8.2002 at about 10 pm, the informant-Arbir Murmu (P.W. 7), son of Thakur Murmu (deceased), gave his furd beyond (Ext. 5) before the Jama Police Station upon which a formal FIR (Ext. 6) w drawn as Jama P.S. Case No. 70 of 2000 under Section 302/ 307/ 325/ 326/ 341/ 34 of Indian Penal Code. Upon institution of the case, one Shiv Kumar Singh-Investigating Officer-P.W. 11, took up the investigation. He came to the place of occurrence and did find Thakur Murmu dead, whereas Thuthu Murmu (P.W. 8) and Gidhi Hansda were seriously injured. Immediately he got them removed to Sadar Hospital for treatment. Thereupon, Investigating Officer held inquest on the dead body of Thakur Murmu and prepared an inquest report (Ext. 7). Thereafter the Investigating Officer sent the dead body for post mortem examination. Dr. Debashish Rakshit-P.W. 2 did autopsy on the dead body of Thakur Murmu and found the following anti mortem injuries:--

"i. Lacerated wound over right side of the chin size 3" x 1/2" x 1/4".

ii. Diffused swelling over the occipital region of scalp. On dissection, subcutaneous haemorrhage found underneath the swelling area. On further dissection, fracture of occipital bone was found. On further opening of skull, collection of blood was found inside the cranium cavity and brain matter and mï¿½nages found lacerated.

iii. Abrasion over left side of chest size 1" x 1/2. On dissection of thorax left 5th and 6th ribs were found fractured. Left lung was fund lacerated. Collection of blood was found inside the thoracic cavity."

According to the opinion of the doctor, the death occurred due to haemorrhage and shock, as a result of injury Nos. 2 and 3. Further, it has been opined that the injuries were caused by hard and blunt substance such as iron rod and lathi. Post mortem examination report has proved as Ext. 1.

Meanwhile, investigation of the case was taken over by another Investigating Officer -Satish Chandra Das (P.W. 12) who, when came to know that the injured Gidhi Hansda has died in the hospital on 21.8.2002, came to the hospital and held inquest on the dead body of Gidhi Hansda and prepared inquest report (Ext. 7/1). Thereafter the Investigating Officer sent the dead body for post mortem examination. Dr. Nirmal Kumar Singh-P.W. 10 held autopsy on the dead body of Gidhi Hansda and found the following anti mortem injuries:--

"i. Incised wound 9 cm x 1 cm x bone deep over left side of occipital region.

ii. Incised wound 3 cm x 1/2 cm x skin deep over temporal region of the head.

iii. Lacerated wound 4 cm x 1 cm x bone deep over left parietal region of the head. On dissection underline bone was found fractured into pieces. On further dissection, underneath brain and membrain were found lacerated with collection of blood in surrounding region of the brain cavity.

iv. Abrasion 1cm x 1/2 cm over back of right elbow joint.

v. Diffused swelling and deformity of lower part of left leg. On further dissection, both bone tibia and fibula were found fractured."

According to the doctor, injury Nos. 1 and 2 have been caused by sharp edge weapon, whereas rest was caused by hard and blunt substance. In the opinion of the doctor, death occurred due to shock and haemorrhage on account of above injuries. Injury No. 3 was sufficient enough to cause death in natural course. Post mortem examination report has proved as Ext. 4.

The said doctor-P.W. 10 had also examined Thuthu Murmu on 19.8.2002 whereby he found the following injuries on the person of Thuthu Murmu:--

"i. Incised wound 3 cm x 1cm x skin deep on the right side of scalp.

ii. Lacerated wound 5 cm x 1/2 cm x skin deep on the left side of the forehead above eyebrow.

iii. Abrasion 3 cm x 1/4 cm on left side of chest.

iv. Diffused swelling and pain over right and left leg.

v. Diffused swelling over right side of chest."

According to the doctor, the nature of injury No. 1 was simple caused by sharp weapon, whereas injury Nos. 2, 3 and 4 were also simple but had been caused by hard and blunt substance. Injury No. 5 was found to be grievous, caused by hard and blunt substance. Injury report was proved as Ext. 3.

3. After completion of the investigation. Investigating Officer submitted charge-sheet against the appellants upon which cognizance of the offence was taken. When the case was committed to the Court of Sessions, charge were framed to which the appellants pleaded not guilty and claimed to b tried.

4. During trial, the prosecution in order to prove the charges examined altogether 12 witnesses. Of them, P.W. 1-Sukhu Murmu is an eye witness who had come to participate in the panchayati. According to him, when panchayati was over, Chhotu Murmu (not examined), Thakur Murmu (deceased), Luthura Hansda-P.W. 4, Thuthu Murmu (P.W. 8) and Gidhi Hansda (deceased), wife of Thuthu Murmu, were taking him to his village for leaving him to his home. While they reached near the house of Nunua Murmu-P.W. 6, Barka Murmu, appellant-Ruplal Murmu and appellant-Babudhar Murmu accosted them and started assaulting Thakur Murmu, Thuthu Murmu (P.W. 8) and Gidhi Hansda with iron rod and lathi. Meanwhile, he fled away from there. P.W. 3-Satish Murmu is the hearsay witness, whereas P.W. 4-Luthura Hansda has testified that when he saw the accused persons and the prosecution party fighting with each other, he left that place. P.W. 5-Dhena Tudu is the person in whose house panchayati had taken place. According to him, he did not see the occurrence. P.W. 6-Nunua Murmu is the witness to inquest who had put his signature over the inquest report. Arbind Murmu-the informant has been examined as P.W. 7. According to him, when he came to the place of occurrence on hearing Halla, he found Thuthu Murmu (P.W. 8) and Gidhi Hansda lying on the ground unconscious. Further, he has testified that his father-Thakur Murmu inflicted knife blow upon Barka Murmu and then his father was assaulted by these appellants by lathi and iron rod as a result of which, he died. P.W. 8-Thuthu Murmu has testified that panchayati had taken place in the house of Pradhan-Dhena Tudu-P.W. 5. After panchayati was over, the Panches went their home. He has also deposed that the altercation had taken place but he cannot say as to who had assaulted the deceased. He has been declared hostile. P.W. 9-Malothi Hansda is an eye witness who testified that after panchayati was over, Thakur Murmu (deceased), Thuthu Murmu (P.W. 8), Gidhi Hansda (deceased) and Luthura Hansda-P.W. 4 were taking Sukhu Murmu-P.W. 1 to his village. Upon hearing Halla, when she came to the place of occurrence, she saw the appellants assaulting Thakur Murmu and also Thuthu Murmu (P.W. 8) and Gidhi Hansda by lathi and iron rod as a result of which Thuthu Murmu (P.W. 8) and Gidhi Hansda became unconscious whereas Thakur Murmu died there.

5. After closure of the prosecution case, these appellants and other accused persons were questioned under Section 313 of Cr.P.C. about the incriminating circumstances appearing against them to which they denied.

6. The trial court having found the testimonies of the eye witnesses particularly P.Ws. 1 and 7 in part and P.W. 9 trustworthy, getting corroboration from the medical evidence, recorded the order of conviction and sentence as aforesaid.

Being aggrieved with the said judgment and order, Babudhan Murmu preferred criminal appeal bearing Cr. Appeal (D.B.) No. 1746 of 2004. Subsequently, Babudhan Murmu also joined the appellant- Ruplal Murmu when Jail Appeal (D.B.) No. 1916 of 2004 was filed. Meaning thereby that Babudhan Murmu has preferred two criminal appeals which cannot be held to be maintainable and hence Gr. Appeal (D.B.) No. 1916 of 2004 shall be confined only to appellant- Ruplal Murmu

7. Mr. P.K. Verma & Mr. Lakhan Sharma, learned counsel appearing for both the appellants, submit that only two witnesses i.e. P.Ws. 1 and 9 have claimed to be the eye witnesses to the occurrence but their testimonies are not consistent with each other and, therefore, the trial court should not have placed reliance on their testimonies. Since the testimonies of the witnesses are not consistent on the point of assault and also on another point, the judgment of conviction and order of sentence is fit to be set aside.

8. As against this, Mr. S.S. Choudhary, learned counsel appearing for the State, submits that not only the P.Ws. 1 and 9 have supported the case of the prosecution but P.W. 7-informant also seems to have supported the case of the prosecution. They have categorically deposed that the appellants had assaulted Thakur Murmu and Gidhi Hansda with iron rod and lathi as a result of which they died. They have also assaulted Thuthu Murmu-P.W. 8 as a result of which he sustained injuries. Ocular evidence gets corroboration from the medical evidence and thereby the trial court is absolutely justified in recording the judgment of conviction and order of sentence.

9. Having heard learned counsel for the parties and on perusal of record, we do find that it is the case of the prosecution, as has been emerged out from the testimonies of the eye witnesses i.e. P.Ws. 1 and 9, that Thuthu Murmu (P.W. 8) had convened a panchayati in the house of Village Pradhan-Dhena Tudu for settling the dispute, which was there in between him and his son (appellant-Ruplal Murmu). After panchayati was over, Thakur Murmu (deceased), Thuthu Murmu (P.W. 8), Gidhi Hansda (deceased), and Luthura Hansda were taking Sukhu Murmu (P.W. 1) to his home, who had participated in the panchayati. In that course, when they came near the house of Shibu Murmu, both the appellants and one Barka Murmu came across with them. On seeing them, these appellants started abusing them which resulted into scuffle in between them. In that course, as per the case of the defence, Barka Murmu, who was accompanying these appellants, was stabbed to death. On the other hand, these two appellants did assault Thakur Murmu, Gidhi Hansda and Thuthu Murmu (P.W. 8) with lathi and iron rod as a

result of which Thakur Murmu died instantly at the spot, whereas Thuthu Murmu and Gidhi Hansda sustained grievous injuries who were removed to the hospital. On 21.8.2002 Gidhi Hansda succumbed to her injuries. The testimonies of the eye witnesses i.e. P.W. 1 and 9 appear to be quite consistent to each other. Further, their evidences get corroboration from the medical evidence, as according to the doctor, the injuries, sustained by the deceased, had been caused by hard and blunt substance but the question in the facts and circumstances does arise as to whether the case of the prosecution comes within Exception 4 of Section 300?

10. In this regard, it be noted that it is the case of the prosecution itself which is evident from the evidences of P.Ws. 4, 8 and 9, that when the appellants and Barka Murmu came across with the member of the prosecution party, altercation took place. In that course, Barka Murmu was stabbed to death, whereas these appellants did assault Thakur Murmu and Gidhi Hansda with lathi and iron rod as a result of which they died. Thus, from the evidence brought on record, it does appear that whatever occurrence took place, it took place without there being any pre-meditation and that too in a sudden quarrel, and at the same time, nothing is there that the appellants acted in cruel and unusual manner. Thus, the case falls within the para-meter of Exception 4 of Section 300 and hence the culpable homicidal committed does not amount to murder.

11. Under the circumstances, the trial court did commit illegality in recording the judgment of conviction and order of sentence under Section 302 of Indian Penal Code. In that event, the appellants instead of offence under Section 302 of Indian Penal Code is convicted for the offence under Section 304 Part-II of Indian Penal Code and is sentenced to undergo rigorous imprisonment for the period already undergone. So far the conviction and sentence under Section 307 of Indian Penal Code is concerned, it is hereby affirmed.

12. In the result, both these appeals stand dismissed with the modification of the order of conviction and sentence as stated above.