

**(2014) 06 JH CK 0009**

**Jharkhand High Court**

**Case No:** Cr. Appeal (D.B.) Nos. 263 and 385 of 2012

Narayan Tudu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** June 26, 2014

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 141, 147, 148, 149, 302

**Citation:** (2014) 4 AJR 507 : (2015) 1 Crimes 338

**Hon'ble Judges:** Dhirubhai Naranbhai Patel, J; Amitav Kumar Gupta, J

**Bench:** Division Bench

**Advocate:** Shekhar Prasad Sinha, Advocate for the Appellant; Ravi Prakash, Additional Public Prosecutor, Advocate for the Respondent

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**Judgement**

Dhirubhai Naranbhai Patel, J.

These appeals have been preferred against the common judgment of conviction dated 30th January, 2012 and order of sentence dated 31st January, 2012 passed by Shri Ram Naresh Mishra, District and Sessions Judge-II, Dhanbad in Sessions Trial No. 223 of 1992, whereby, the appellants in both the appeals have been convicted for the offence punishable Under Section 302 to be read with Section 34 of the Indian Penal Code for life imprisonment. The appellants of Criminal Appeal (D.B.) No. 385 of 2012 namely, Narayan Tudu and Lobin Tudu have also been sentenced to undergo rigorous imprisonment for three years for the offence punishable under Section 148 of the Indian Penal Code whereas the appellants of Criminal Appeal (D.B.) No. 263 of 2012 namely, Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu have been further sentenced to undergo rigorous imprisonment for two years for the offence punishable under Section 147 of the Indian Penal Code. However, all the sentences have been ordered to run concurrently.

2. The case of prosecution is that on 11.08.1991 at 6:45 A.M., the informant Mohan Hansda (P.W.-2) gave fardbeyan to police that on 10.08.1991 at about 4:30 P.M., the

informant was talking with his brother-in-law Sukhlal Marandi in front of his house. At about 5:45 P.M., Narayan Tudu armed with Tangi (Axe), Lobin Tudu armed with Tangi (Axe), Gorain Hansda armed with Tangi (Axe) and Rasu Hansda, Lalu Hansda, Manager Murmur, Labeshwar Tudu, Budhan Tudu, Dumka Tudu armed with Lathi came out from the house of Rasu Hansda and Gorai Hansda (accused-expired during trial) and came to the door of the informant and started abusing him with filthy language while informant was objecting them from abusing him. At that time, Ruba Tudu (deceased) came there and objected the accused persons and asked them as to why they were using filthy language. Then Narayan Tudu ordered his companion to assault Ruba Tudu, whereupon, Gorai Hansda, Narayan Tudu and Lobin Tudu, who were armed with Tangi (Axe) assaulted Ruba Tudu on his head as a result he fell down on the ground and started writhing. At the same time, Pano Manjhain, (wife of Ruba Tudu), who was also coming to that side saw the occurrence. Thereafter, the accused persons chased the informant and his brother-in-law to assault them but due to fear they fled away from there and went to village Uparchirahi Tola and stayed there throughout the night and in the morning informant lodged the case in the police station. The informant further alleged that the motive behind the occurrence is that the accused persons named above had forcibly occupied one tank, which was adjacent to the land of the informant. The informant had been protesting against forceful possession of the said Tank by the accused persons as he also wanted to use the tank water for irrigation to his field but the accused persons were not allowing him to do so and due to this annoyance the accused persons having made unlawful assembly attacked at the house of the informant and killed Ruba Tudu by assaulting him with Tangi.

Seven witnesses were examined by the prosecution:

3. It has been submitted by the counsel for the appellants in both the appeals that there are major omissions, contradictions and improvements in the depositions of the prosecution witnesses, which affect the very root of the case. This aspect of the matter has not been properly appreciated by the learned trial court and hence the judgment and order of conviction and sentence passed by the learned trial court deserves to be quashed and set aside. It is also submitted by the counsel for the appellants in both the appeals that there is gross delay in lodging the F.I.R., which is approximately about 12 hours. No independent eyewitness has been examined by the prosecution, even though, several persons were present at the place and time of occurrence. P.W. 5 has stated that she had seen Narayan Tudu, Lobin Tudu and Rasu Tudu causing two injuries upon the body of the deceased, whereas as per the medical evidence, there are three injuries, looking to the postmortem report, which is at Ext.-4. Thus, there is discrepancy between the ocular evidence and the medical evidence and the eye-witnesses are in fact not the eye-witnesses at all. It is further submitted by the counsel for the appellants in both the appeals that there is no F.S.L. report on the record. The place of occurrence is also doubtful and not proved

by the prosecution and lastly, it is submitted that both the so called eyewitnesses i.e. P.W. 2 and P.W. 5 have failed to state before the learned trial court that which of the appellants had caused what injury and on which part of the body of the deceased and this aspect of the matter has not been properly appreciated by the learned trial court and hence the prosecution has failed to prove the offence of murder committed by these appellants beyond all reasonable doubts and, therefore, the judgment and order of conviction and sentence passed by the Sessions Judge-II, Dhanbad dated 30/31st January, 2012 in Sessions Trial No. 223 of 1992 deserves to be quashed and set aside. It is further submitted by the counsel for the appellants that said Narayan Tudu and Lobin Tudu, who are the appellants in Criminal Appeal (D.B.) No. 385 of 2012, are in judicial custody since long and the appellants of Criminal Appeal (D.B.) No. 263 of 2012 are on bail because of suspension of sentence passed by this Court.

4. It is submitted by the counsel for the State-A.P.P. in both the appeals that no error has been committed by the learned trial court in appreciating the evidence on record in the Sessions Trial and the prosecution has proved the offences as alleged by the prosecution beyond all reasonable doubt. The case of the prosecution is based upon more than one eye-witness, who is P.W. 2 and P.W. 5. The whole incident has taken place on 10th August, 1991 at about 5:45 P.M. and the F.I.R. was lodged on 11th August, 1991 at about 6:45 A.M. before Baliapur police station, District-Dhanbad. It is submitted by the A.P.P. that P.W. 2 has clearly narrated the role played by these appellants-accused i.e. Naryan Tudu and Lobin Tudu stating that they along with one Gorain Hansda came with sharp cutting instrument-Tangi, whereas other persons, who are accused, came with Lathi, a hard and blunt substance and they assaulted Ruba Tudu @ Shambhu Tudu so severely that Ruba Tudu @ Shambhu Tudu expired on the spot. Therefore, Narayan Tudu and Lobin Tudu are the persons, who used sharp cutting instrument, whereas Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu have used the Lathi, but there are no injuries caused by Lathi, as per the postmortem report-Ext. 4 and as per the deposition given by P.W. 6 Dr. Vinod Kumar. It is further submitted that as they came together, there was a common intention of each of these appellants and there was a common object also of that unlawful assembly in prosecution of the common object for causing such bodily injury that the deceased may expire, they assaulted Ruba Tudu @ Shambhu Tudu and hence they have been rightly punished for the offence punishable under Section 302 to be read with Section 34 of the Indian Penal Code and Narayan Tudu and Lobin Tudu have also been punished for the offence punishable under Section 148 of the Indian Penal Code, and the appellants of Criminal Appeal (D.B.) No. 263 of 2012 have been rightly punished for the offence punishable under Section 147 of the Indian Penal Code, over and above, life imprisonment for the offence of murder. The medical evidence has also corroborated to the depositions of the eye-witnesses. Inquest report has also been proved by P.W. 3. Thus, the prosecution has proved the offence beyond all

reasonable doubts and, therefore, these appeals may not be entertained by this Court.

5. Having heard the counsel for the appellants and State-A.P.P. and having gone through the evidences on record, it appears that P.W. 2-Mohan Hansda is the informant, who has given his fardbeyan before the Baliapur Police Station on 11th August, 1991 at about 6:45 A.M. that on previous day i.e. on 10th August, 1991 at about 5:45 P.M., these appellants along with the other co-accused assaulted Ruba Tudu @ Shambhu Tudu by Tangi (Axe) and because of this injury, he expired on the spot. On the basis of the First Information Report registered at Baliapur Police Station being P.S. Case No. 111 of 1991, investigation was carried out, statements of several witnesses were recorded, thereafter, charge sheet was filed and the case was committed to the Court of Sessions being Sessions Trial No. 223 of 1992 and on the basis of evidences given by P.Ws. 1 to 7, the learned trial court has convicted these appellants for the offence punishable under Section 302 to be read with Section 34 of the Indian Penal Code for life imprisonment and the appellants namely, Narayan Tudu and Lobin Tudu (appellants of Criminal Appeal (D.B.) No. 385 of 2012) have also been punished for the offence punishable under Section 148 of the Indian Penal Code for three years rigorous imprisonment and the appellants namely, Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu (appellants of Criminal Appeal (D.B.) No. 263 of 2012) have been punished for rigorous imprisonment of two years for the offence punishable under Section 147 of the Indian Penal Code.

6. Thus, it appears that the case of prosecution is based upon more than one eye-witness, who is P.W. 2-Mohan Hansda-informant and P.W. 5-Pano Manjhian, who is wife of the deceased.

7. Looking to the depositions given by P.W. 2-Mohan Hansda-informant, he has stated that he has seen these appellants as well as other accused persons armed with Tangi (Axe) and lathi, they came there from their houses and they had some earlier dispute with the informant's side persons. There was hot altercation and usage of filthy language between the appellants and other co-accused and P.W. 2's side persons. Meanwhile Ruba Tudu @ Shambhu Tudu came and tried to convince these appellants and other co-accused not to use the filthy language and thereafter, whole attention was diverted towards Ruba Tudu @ Shambhu Tudu and in that process, Narayan Tudu, Lobin Tudu and Gorain Hansda assaulted with Tangi (Axe) upon Ruba Tudu @ Shambhu Tudu and because of this injury, he fell down. Accused Gorain Hansda has expired and the Criminal Appeal No. 385 of 2012 has been preferred by Narayan Tudu and Lobin Tudu. Thus, both the appellants of Criminal Appeal (D.B.) No. 385 of 2012 have used sharp cutting instrument in causing murder of Ruba Tudu @ Shambhu Tudu, as per the deposition given by P.W. 2. Other four accused have preferred Criminal Appeal (D.B.) No. 263 of 2012.

8. We have heard both the counsels upon going through the examination-in-chief of this witness and also looking to his cross-examination, nothing has come out in favour of Narayan Tudu and Lobin Tudu and the examination-in-chief given by P.W. 2 about the role played by Narayan Tudu and Lobin Tudu remained intact and as it is, so far as these two appellants are concerned. Thus, P.W. 2- Mohan Hansda is trustworthy and a reliable witness, so far as the appellants namely, Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu are concerned, who are the appellants of Criminal Appeal (D.B.) No. 263 of 2012, neither this informant-P.W. 2 has stated in the fardbeyan that stick or Lathi blows were given to the deceased nor in his examination-in-chief, he has stated anything about the usage of Lathi for causing murder of the deceased. Thus, it appears that the appellants of Criminal Appeal (D.B.) No. 263 of 2012 have not used any weapon and have not caused any injury upon the body of the deceased. Looking to the deposition of P.W. 2, it appears that the appellants of Criminal Appeal (D.B.) No. 263 of 2012 were not sharing any common intention for causing murder of the deceased nor there was any common object on the part of these appellants of Criminal Appeal (D.B.) No. 263 of 2012, in prosecution of the murder to be committed of the deceased. Thus, these appellants of Criminal Appeal (D.B.) No. 263 of 2012 are not covered by Section 34 of Indian Penal Code nor they are covered by the definition of unlawful assembly under Section 141 nor under Section 149 of the Indian Penal Code.

9. Looking to the deposition of another witness i.e. P.W. 5-Pano Manjhian, who is the wife of the deceased, she has stated that Narayan Tudu and Lobin Tudu and one Gorain Hansda have caused injury upon her husband-Ruba Tudu @ Shambhu Tudu by Tangi (Axe). Accused Gorain Hansda has expired (during trial) and, therefore, we are concerned with Narayan Tudu and Lobin Tudu, who are appellants of Criminal Appeal (D.B.) No. 385 of 2012. Thus, these two appellants namely, Narayan Tudu and Lobin Tudu have used sharp cutting instrument in causing murder of the deceased. Even in her cross-examination, this aspect of the matter has been remained intact and as it is. She has proved the date of occurrence, the place of occurrence and the manner in which Narayan Tudu and Lobin Tudu have used sharp cutting instrument in causing murder of the deceased. Her deposition is also getting enough corroboration by medical evidence of P.W. 6 - Dr. Vinod Kumar, who has carried out postmortem, which is at Ext.-4. Now, looking to the case of appellants of Criminal Appeal (D.B.) No. 263 of 2012 namely, Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu, this witness P.W. 5 has not stated that they have also given Lathi blows on deceased. On the contrary, she has stated in her examination-in-chief that Ruba Tudu @ Shambhu Tudu after getting assaulted by Narayan Tudu and Lobin Tudu had fallen down and, thereafter, nobody had assaulted. Thus, no role has been played by Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu in causing murder of the deceased as well as looking to the inquest report also. Thus, it appears from the depositions of P.W. 5 that Narayan Tudu and Lobin Tudu have used sharp cutting instrument namely, Tangi (Axe) in causing murder of Ruba Tudu

@ Shambhu Tudu. Nothing has come out in favour of these two appellants from the cross-examination of this witness and medical evidence given by P.W. 6-Dr. Vinod Kumar which is corroborative to the deposition of P.W. 5.

10. Looking to the medical evidence given by P.W. 6 Dr. Vinod Kumar, who has carried out postmortem of the body of the deceased, the following injuries have been found:

#### Injuries-

(1) External findings - Healthy body, Rigor mortis passed out. Head, face smeared with blood stains.

(2) Following ante mortem injuries were found -

(i) Incised wound 3 ½" x 1" x brain deep, 3 ½" x 1" x brain deep, both overlapping seen on the left frontal parietal region of head. Incised brain matter was partly lying out, skull bones in wounds were cut and partly broken.

(ii) Incised wound 2 ½" x ¾" x skull bone deep (only outer table was cut) seen on the right side of frontal region of head.

(iii) Incised wound 2" x 1½" x bone deep on the left side arm at its upper anterior aspect, left arm bone cut and partly broken in the wound.

On dissection found the following-

Both side chambers of the heart were empty, stomach was ¼th full with some digested rice, urinary bladder was empty, all the internal organs were pale.

#### Opinion-

In the opinion of P.W. 6, death was in coma and shock as a result of aforementioned cranio cerebral injuries and hemorrhage caused by heavy weapon having sharp cutting edge. May be just like Tangi. Time passed since death was between 15 to 20 hours before the time of Postmortem examination.

11. In view of the aforesaid narration of injuries by the Doctor, it appears that there is use of sharp cutting weapon and there are corresponding injuries upon the body of the deceased. Both the eyewitnesses namely, P.W-2 and P.W-5 have stated the use of sharp cutting weapon by Narayan Tudu and Lobin Tudu (appellants of Criminal Appeal (D.B.) No. 385 of 2012). Thus, the medical evidence given by P.W.-6 is corroborative to the depositions of P.W-2 and P.W.-5, so far as appellants namely, Narayan Tudu and Lobin Tudu are concerned. The prosecution has thus, proved the offence of murder committed by Narayan Tudu and Lobin Tudu beyond all reasonable doubt.

12. So far as the appellants namely, Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu (appellants in Criminal Appeal (D.B.) No. 263 of 2012) are concerned,

neither the prosecution has been able to prove the offence of murder committed by them under Section 302 to be read with Section 34 of the Indian Penal Code nor the prosecution has been able to prove the offence committed under Section 147 of the Indian Penal Code beyond all reasonable doubts. These appellants were not sharing any common intention nor were they prosecuting their common object of any unlawful assembly. In fact, there was already a crowd having hot altercation and in that crowd at one side there were appellants and on the other side was P.W-2 and his family members. In fact, this deceased namely, Ruba Tudu @ Shambhu Tudu was a by-passer on the road and just out of some curiosity, he had plunged into that crowd and as a gentleman, he was trying to convince the accused side persons not to use the filthy language etc. and the attention of these appellants was now diverted towards Ruba Tudu @ Shambhu Tudu and Narayan Tudu and Lobin Tudu along with Gorai Hansda caused injuries upon Ruba Tudu @ Shambhu Tudu. Gorai Hansda has expired during the trial, whereas other appellants namely, Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu (appellants in Criminal Appeal (D.B.) No. 263 of 2012) have not caused any injury upon the deceased nor they were sharing any common intention nor there was any unlawful assembly and they too were not the members of any unlawful assembly. The prosecution has failed to prove any offence committed by these four appellants of Criminal Appeal (D.B.) No. 263 of 2012. This aspect of the matter has not been properly appreciated by the learned trial court and hence, we hereby partly allow the judgment and order of conviction passed by Sessions Judge-II, Dhanbad in Sessions Trial No. 223 of 1992.

13. So far as the appellants namely, Narayan Tudu and Lobin Tudu are concerned, the offences are proved but so far as the appellants namely, Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu (appellants in Criminal Appeal (D.B.) No. 263 of 2012) are concerned, the prosecution has failed to prove any offence committed by these appellants. Thus, Criminal Appeal (D.B.) No. 385 of 2012 is hereby dismissed and Criminal Appeal (D.B.) No. 263 of 2012 is hereby allowed.

14. Counsel appearing for the appellants submitted that there is a discrepancy between the ocular evidence and medical evidence.

So far as the appellants namely, Narayan Tudu and Lobin Tudu are concerned, we are not accepting this argument mainly for the reason that upon looking to the depositions given by P.W-2 and P.W-5 to be read with medical evidence given by P.W-6, there is enough corroboration by medical evidence to the ocular evidence. When the eyewitnesses are giving their depositions after approximately 48 months and when they are narrating the incident, there may be some error committed by them in proving the blows given with the help of sharp cutting weapon-Tangi (Axe). They have narrated two injuries in their depositions, whereas as per the medical evidence, there are three injuries. We see no reason for giving any benefit to Narayan Tudu and Lobin Tudu because of the depositions of the eye-witnesses. The deposition given in the Court depends upon the capacity of the observation, the

power of memory and art of narration of whole incident in the Court by the witness. Thus, deposition is the combination of the aforesaid three aspects and there may be a slight error on their part, in narration of the incident. Photographical memory is not expected from the eye-witnesses.

15. Counsel appearing for the appellant submitted that the place of occurrence is also doubtful.

This contention is also not accepted by this Court mainly for the reason that right from F.I.R., the place of occurrence is narrated by the informant-P.W. 2, which has also been reflected in his deposition as P.W. 2 and similarly, P.W. 5 has also narrated the same place of occurrence. There are no two places of occurrence at all. This argument advanced by the counsel for the appellants is just as a "free style argument". There is no such cross-examination at all on this line of defence of these two witnesses. This type of "free style argument" is being deprecated by this Court.

16. Counsel appearing for the appellants has submitted that there is a gross delay in lodging the F.I.R.

This contention is not accepted by this Court, mainly for the reason that the incident has taken place on 10th August, 1991 at about 5:45 P.M. P.W. 5 is the wife of the deceased. This widow cannot leave the dead body of her husband on road and that too during night hours. Some time ought to have been consumed by the relatives of the deceased. We cannot expect from P.W. 5 the electric speed. They are rustic villagers. There is also a long distance of about 6 Kilometers between the police station and the place of occurrence. During night hours, there may not be proper transport facilities available and being a female, there may not be a definite speed for lodging of the F.I.R. P.W. 2 has immediately rushed to the Baliapur Police Station at 6:45 A.M.- morning hours of 11th August, 1991. Thus, there is no delay in lodging the F.I.R. Every delay in lodging the F.I.R., minute by minute, is not required to be explained at all and every delay is not fatal to the prosecution. In fact, in this case, there is no much delay at all, which can be labelled as fatal delay in lodging the F.I.R.

17. As a cumulative effect of the aforesaid evidences on record, we hereby upheld the conviction and sentence awarded to Narayan Tudu and Lobin Tudu, by trial court in Sessions Trial No. 223 of 1992. Thus, there being no substance, Criminal Appeal (D.B.) No. 385 of 2012 is hereby dismissed.

18. We, however, quash and set aside the judgment and order of conviction and sentence passed by the trial court in Sessions Trial No. 223 of 1992, so far as Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu are concerned. Accordingly, Criminal Appeal (D.B.) No. 263 of 2012 is allowed and the appellants in Criminal Appeal (D.B.) No. 263 of 2012, namely, Lalu Hansda, Labeshwar Tudu, Dumka Tudu and Thakur Tudu, who are on bail, are discharged from liabilities of their respective bail bond given to the trial court and they are also discharged from the charges levelled against them.



19. Both the Criminal Appeals being Criminal Appeal (D.B.) No. 385 of 2012 and Criminal Appeal (D.B.) No. 263 of 2012 are disposed of.