

(2024) 12 JH CK 0076

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No.645 Of 2002

Babu Lal Hansda

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 17-12-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302

Citation : (2024) 12 JH CK 0076

Hon'ble Judges : Ananda Sen, J; Pradeep Kumar Srivastava, J

Bench : Division Bench

Advocate : Arvind Kumar Choudhary, Sanjay Kumar Srivastava

Final Decision : Allowed

Judgement

1. This Criminal Appeal has been preferred on behalf of the appellants being aggrieved by the judgment of conviction dated 12.09.2002 and order of sentence dated 16.09.2002 passed by Learned 3rd Additional Sessions Judge, Deoghar, in Sessions Trial No.90 of 1991, whereby and wherein the appellants have been convicted for offence under Section 302/34 IPC. They were sentenced to undergo imprisonment for life under Section 302/34 IPC.

2. Heard learned counsel representing the appellants and learned A.P.P. representing the State at length. Perused the material available on record.

3. At the outset, it has been apprised to this Court that appellant No.1 - Babu Lal Hansda, appellant No.2 - Soban Murmu, appellant No.3 - Rameshwar Murmu and appellant No.5 - Debashi Hansda, have expired during pendency of this appeal and an affidavit to that effect has been filed by the State. There is no substitution petition on behalf of the heirs of these deceased appellants.

Accordingly, this Criminal Appeal qua appellant No.1 - Babu Lal Hansda, appellant No.2 - Soban Murmu, appellant No.3 - Rameshwar Murmu and appellant No.5 - Debashi Hansda, stands abated.

4. This appeal is now only confined to appellant No.4 - Ramulal Hansda.

5. From the F.I.R., we find that the informant – Rashiklal Hansda (P.W.-1) stated that he was in his house and he heard some hue and cry that someone is being assaulted. He reached the place of occurrence which is near a Banyan tree and found the deceased Chote Lal, lying and all the accused persons are assaulting him with axe, sticks and other deadly weapons. Chote Lal, later on died on the next day.

6. Based on the aforesaid fardbeyan, an F.I.R. was registered in Mohanpur Police Station. After investigation, charge-sheet was submitted against the appellants. Thereafter the case was committed to the Court of Sessions. The appellants pleaded not guilty and were put on trial.

7. To prove the prosecution case, the prosecution has examined only three witnesses. They are :-

i. P.W.-1 :- Rashiklal Hansda

ii. P.W.-2 :- Churka Murmu

iii. P.W.-3 :- Darbari Murmu

8. None of the documents have been exhibited. Neither the Doctor who conducted the post-mortem has been made a witness nor the Investigating Officer turned up to give evidence. The post-mortem report has also not been exhibited.

9. P.W.-3 namely Darbari Murmu is a hearsay witness. He stated that he had heard from P.W.-1 and P.W.-2 that the appellants have assaulted the deceased which resulted in his death.

P.W.-2 namely Churka Murmu has been declared hostile. P.W.-1 namely Rashiklal Hansda is the informant of this case. He is the sole witness based on whose statement, the appellant has been convicted. He stated that on hearing hue and cry, he went to the place of occurrence which is near a Banyan tree and found the deceased lying injured. Then, he further stated that he had seen these appellants assaulting the deceased. He particularly stated against Babu Lal Hansda (died) that he had assaulted the deceased with an axe and others with lathi. This is the testimony of sole eye witness on the facts of this case.

10. We find that there is no corroborative evidence about the said assault. As mentioned earlier, neither the Doctor has been examined nor the post-mortem report was exhibited. What is the fatal blow has also not been proved. Whether the blows were sufficient to cause death in normal circumstances is not reflected from the record. Further, on which part of the body, the assault was made, has also not been mentioned. The evidence led by the prosecution does not inspire any confidence, and without any corroboration.

11. Considering the aforesaid facts, we are inclined to acquit appellant No.4 -

Ramulal Hansda.

12. Accordingly, this Criminal Appeal qua appellant No.4 - Ramulal Hansda, stands allowed. The impugned judgment of conviction dated 12.09.2002 and order of sentence dated 16.09.2002 passed by Learned 3rd Additional Sessions Judge, Deoghar, in Sessions Trial No.90 of 1991, are hereby set aside. The appellant No.4 - Ramulal Hansda is acquitted of the charges. As the appellant No.4 - Ramulal Hansda, is on bail, he is discharged from the liability of bail bonds, so are the bailers.

13. Trial Court Record be transmitted back to the Court concerned.

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