

**(2013) 08 JH CK 0017**

**In the Jharkhand High Court**

**Case No :** Criminal (Jail) Appeal (D.B.) No. 198 of 2007

Babulal Marandi and Bodra Hansda Alias Boda Hansda

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision :** 05-08-2013

**Acts Referred:**

**Citation :** (2014) 1 AJR 285

**Hon'ble Judges :** Narendra Nath Tiwari, J; Dhrub Narayan Upadhyay, J

**Bench :** Division Bench

**Advocate :** Hardeo Pd. Singh, A.C, for the Appellant; M.B. Lal, Assistant Public Prosecutor, for the Respondent

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## **Judgement**

1. The appellants have been convicted by learned Additional Sessions Judge, Pakur u/s 302/149 IPC and sentenced to undergo rigorous imprisonment for life. They have been also convicted u/s 307/149 IPC and Section 148 IPC and have been sentenced to undergo R.I. for seven years and three years respectively. The sentences are to run concurrently. The prosecution case, based on the fardbeyan of Mini Besra (P.W. 6), in brief, is that in the morning of 21.9.1998 deceased Marang Hembram along with his two sons, Suleman Hembram (P.W. 5) and Bajal Hembram (P.W. 7) was ploughing land situated at Mouza Pokherya, Manjhee Tola, P.S. Maheshpur, District Pakur. All of a sudden the appellants along with other persons arrived there variously armed and started assaulting them. One of the accused, namely, Piru Som Besra hurled a Lathi blow on the deceased, as a result thereof he fell down on the ground. Piru Som Besra thereafter caught hold of his head and Chhote Besra caught hold of his legs and Ramlal Besra severed neck of the deceased by inflicting Farsa blow. Informant claimed that he had witnessed the incident and raised alarm whereupon villagers had assembled and the accused persons had runaway.

The reason behind the occurrence is said to be dispute between the deceased and the appellants regarding the land of the father-in-law of the deceased. The deceased claimed the land as Gharjamai whereas accused persons were claiming

as agnates of father-in-law of the deceased.

The incident was reported to the village Pradhan and thereafter to the local police.

2. On receiving the report, the Officer-in-Charge of Maheshpur P.S. went to the village and recorded the statement of Miru Besra (P.W. 6) in presence of the villagers including village Pradhan (P.W. 3). The police prepared an inquest report, seized weapons and the blood stained soil from the place of occurrence and referred the injured P.W. 5 and P.W. 7 to hospital for their treatment. The case was registered as Maheshpur P.S. Case No. 85 of 1998 u/s. 147/148/149/323/324/307/302 of the Indian Penal Code.

3. The police after investigation submitted charge-sheet u/s. 302/307/148/149 of the Indian Penal Code against eight accused persons including the appellants.

4. The charges were framed against the appellants and other accused persons under Sections 302/149 I.P.C., 307/149 I.P.C. and Section 148 I.P.C. to which the appellants pleaded not guilty and claimed to be tried.

5. In order to prove the charges, the prosecution altogether examined eight witnesses. P.W. 1-Dr. Bindu Bhushan conducted postmortem on the deceased. P.W. 2 is Dr. Gajadhar Mandal who had treated the injured. P.W. 3 Rasik Kishu is the Village Pradhan in whose presence the F.I.R. was said to be registered. P.W. 4, Haripad Mirdha, is said to have seen the deceased and the injuries on the person of the P.W. 5 and P.W. 7. Suleman Hembram (P.W. 5) and Bajal Hembram (P.W. 7) are said to be injured by assault and eye witnesses to the occurrence. P.W. 6, Miru Besra is the informant and said to be the eye witness. P.W. 8, Kamleshwar Mishra is the I.O. of the case. The S.I., Neyaz Ahmad, who recorded the Fardbeyan, was not examined.

6. The appellants in their statement u/s 313 Cr.P.C. denied the charges and claimed to be innocent.

7. Mr. Hardeo Pd. Singh, learned counsel, appearing for the appellants, assailed the conviction of the appellants mainly on the ground that there is absolutely no evidence of causing any hurt or injury to the deceased by these appellants. The appellants have been convicted with the help of Section 149 I.P.C., but from the evidence on record it is evident that the prosecution has failed to establish the charge u/s. 149 I.P.C. In the evidence it has come that only three persons participated in commission of offence. The prosecution failed to establish that any unlawful assembly was formed. There is no legal basis for conviction of the appellants with the help of Section 149 I.P.C.

8. On the other hand, learned Additional Public Prosecutor supported the impugned judgment and submitted that from the evidence it is manifest that though no active role was played by the appellant No. 2, he was present at the scene of occurrence and the appellant No. 1 had given a Lathi blow on P.W. 7. In view of the said evidence, it cannot be said that there was no role of these

appellants in commission of the offence.

9. We have heard learned counsel for the appellants and learned APP and meticulously scrutinize the evidence on record. P.W. 5, P.W. 6 and P.W. 7 are said to be the eye witnesses. P.W. 5 and P.W. 7 are also injured persons. P.W. 6 is the informant.

10. All the three eye witnesses have clearly stated that Piru Som Besra and Chhote Besra had caught hold of the deceased and Ram Lal Besra had severed the neck of the deceased by Farsa blow.

11. That ocular version is also corroborated by medical evidence of P.W. 1 and the postmortem report-Ext. 1.

12. The said eye witnesses or any other witnesses examined by the prosecution, have not said that any injury was inflicted on the deceased by these appellants. P.W. 7 has said that appellant No. 1 had inflicted Lathi blow, which caused injury to him.

13. Except the said solitary statement of P.W. 7, we find no evidence of any overt or covert act against these appellants.

14. In Gangadhar Behera and Others Vs. State of Orissa, it has been held by Hon"ble Supreme Court that though there is no hard and fast rule to call out the "common object", it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at, before or after the scene of incident.

15. In the instant case the eye witnesses P.W. 5, P.W. 6 and P.W. 7 have consistently asserted that Piru Som Besra, Ramlal Besra and Chhode Besra were variously armed with weapons (Farsa, Bows & Arrow etc.) and when the deceased fell down on the ground the said accused persons had cut through his neck.

16. Nowhere they have stated about any overt-act by the appellants in committing murder of the deceased. The case of sharing common object of committing murder of the deceased also by these appellants could not be made out and established by the prosecution.

17. However, the allegation of causing injury by appellant No. 1 with lathi to P.W. 7 stands proved by the evidence of P.W. 7, attracting and establishing the charge u/s. 323 I.P.C.

18. The prosecution, therefore, has failed to establish charges u/s. 302/149 I.P.C., 307/149 I.P.C. and Section 148 I.P.C. against these appellants, but has proved the charge u/s 323 I.P.C. against the appellant No. 1.

19. In view of above, the conviction of the appellants for the charges u/s. 302/149 I.P.C., 307/149 I.P.C. and Section 148 I.P.C. cannot sustain.

20. For the reasons assigned in the judgment, the order of conviction and sentence of the appellant No. 2 passed by the trial court in Sessions Trial No. 103

of 1999 is hereby set aside and this appeal on his behalf is allowed.

21. So far appellant No. 1 is concerned, his appeal is partly allowed. But he is convicted only u/s. 323 IPC and is sentenced to undergo R.I. for six months. He has already remained in custody for about 12 years. In view thereof, the appellants are directed to be released forthwith, if not wanted in any other case.