

(2018) 02 JH CK 0025
In the Jharkhand High Court
Case No : 549 of 2007

Budhu Munda & Ors

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 21-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#), [Section 148](#)

Citation : (2018) 02 JH CK 0025

Hon'ble Judges : H. C. Mishra, B.B.Mangalmurti

Bench : Division Bench

Advocate : Abdul Wahab

Judgement

1. Heard learned counsel for the appellants and the learned counsel for the State.
2. The appellants are aggrieved by the impugned Judgement of conviction dated 27.04.2007 and Order of sentence dated 28.04.2007, passed by the learned Additional Sessions Judge, F.T.C.-II, Seraikella, in S.T. No. 95 of 2005, whereby, the appellants have been found guilty and convicted for the offences under Sections 148 and 302 / 149 of the Indian Penal Code. Upon hearing on the point of sentence, they have been sentenced to undergo R.I. for life and fine of Rs. 5,000/- each, for the offence under Sections 302 / 149 of the Indian Penal Code, and they have also been sentenced to undergo R.I. for two years each for the offence under Section 148 of the Indian Penal Code, and both the sentences were directed to run concurrently.
3. The prosecution case was instituted on the basis of the fardbeyan of Nandi Soy, the wife of the deceased, Jeera Munda, recorded on 5.2.2005

at about 4:50 P.M at the place of occurrence, wherein the informant has stated that on the previous day, i.e., on 4.2.2005, she had gone to Toklo

haat along with her husband and after making purchases, both of them were returning back to their village. At about 5:00 P.M in the evening, when

they had reached near Rora hill, suddenly eight named accused persons, including these appellants came armed with farsa etc., and the accused

Etwa Munda (not an appellant), assaulted her husband by farsa. Her husband tried to flee away for saving his life, but all the accused persons

chased and assaulted him by farsa, in an agriculture field, due to which, he died at the spot. Thereafter, the accused persons also chased the

informant, but she fled came to her village and informed the villagers. Some of the villagers also came to the place of occurrence. The accused

persons fled away seeing the villagers approaching the place of occurrence. She has also stated that there was previous enmity with the accused

persons and there was a case also for that, and due to the said enmity, the accused persons had assaulted her husband to death. She has also

stated that as it had become night , she could not inform the police and on the next day, the fardbeyan was given. On the basis of the fardbeyan of

the informant, Kuchai P.S Case No. 2 of 2005, corresponding to G.R No.102 of 2005, was instituted for the offence under Sections 302 / 34 of

the Indian Penal Code, against eight named accused persons, including these appellants, and investigation was taken up. After investigation, the

police submitted the charge-sheet in the case against the accused appellants, keeping the investigation open against other accused persons.

4. After commitment of the case to the Court of Session, charge was framed against the accused persons for the offences under Sections 148, 302

/ 149 of the Indian Penal Code, and upon the accused persons" pleading not guilty and claiming to be tried, they were put to trial. In course of trial,

prosecution has examined ten witnesses, including the I.O. and the Doctor who had conducted the post-mortem examination on the dead body of

the deceased, out of whom, P.W.-6 Kuwar Singh Munda and P.W.-10 Ganga Ram Munda have turned hostile and have not supported the

prosecution case at all. P.W.-7 Somnath Munda has also stated that he had no knowledge about the occurrence.

5. P.W.-3 Nandi Soy is the informant in the case and the wife of the deceased. She is also the eyewitness to the occurrence. She has supported

the prosecution case, stating that the occurrence had taken place on a Friday and she had gone along-with her husband Jeera Munda to Toklo

haat. When they were returning from haat at about 5:00 P.M., and had reached near the Rora hill, the accused persons named by her, including

these appellants, came and Etwa assaulted Jeera Munda by daab (sharp cutting weapon) and other accused persons also assaulted Jeera Munda

by farsa, due to which, her husband died in an agricultural field there. She has stated that upon seeing the occurrence, she fled away due to fear

and informed the villagers about the occurrence. The villagers came to the place of occurrence. Her husband had died at the spot. They saw the

injuries on the body of her husband. On the next day, the police was informed, who visited the place of occurrence, and recorded her fardbeyan,

upon which, she had put her thumb impression. She has also stated that the police took away the dead body of her husband. Prior to the

occurrence also, there was altercation between the accused persons and the deceased. She has identified the accused persons, present in the

Court. In her cross-examination, she has stated that at the time of occurrence, it was not dark and the Sun was still in the Sky. She has stated that

she remained with the dead body of her husband for the whole night at the place of occurrence itself. Though she has stated that it takes about five

hours time to reach the Police Station, but the Court has noted that she is a rustic lady and she has no knowledge about the time. Though her

attention was also drawn towards her statement given before the police, but it is not of much relevance, as the same is not relating to her evidence

about the assault made upon her husband. There is nothing of much importance in her cross-examination and she has denied the suggestion to have

given false evidence.

6. P.W.-1 Mangra Munda and P.W.-4 Sukhram Munda have also supported the case as eyewitnesses to the occurrence, stating that on the date

of occurrence, they were also returning from the haat and they had seen the accused persons assaulting the deceased by farsa, causing his death at

the spot. P.W.-1 Mangra Munda is also the witness to the fardbeyan and the inquest report of the dead body, and he had put his thumb

impressions on these documents. There is nothing of much importance in their cross-examinations also.

7. P.W.-2 Lakhan Munda and P.W.-5 Sanika Munda are the hearsay witnesses, who had reached the place of occurrence upon hearing about the occurrence, and they had seen the dead body of the deceased and were informed about the occurrence. P.W.-2 Lakhan Munda has stated that he was informed about the occurrence by the wife of the deceased and he had himself not seen the occurrence, whereas P.W.-5 Sanika Munda has stated that he was informed about the occurrence by Mangra Munda (P.W.-1).

8. P.W.-9 Dr. Pranav Kumar had conducted the post-mortem examination on the dead body of the deceased on 6.5.2005, and had found the

following injuries on the dead body:-

- I) Left ear and Mandible were cut.
- ii) Cut injuries on back near shoulder. Size 10"" x 2"" x up to lungs
- iii) a) Cut injuries on back at middle 10"" x 3"" x up to heart.
b) 3"" x 1/2""x up to small intestines
c) 5"" x 1/2"" x deep up to vertebra.
- iv) Cut injuries on left illiac region.
a) 12"" x 2"" x up to pelvic bone.
b) 3"" x 1/2""x up to pelvic bone.
c) 3"" x 1/2"" x up to pelvic bone.
- v) on right shoulder cut injuries size 4"" x 1/2"" deep up to bone.
- vi) Ribs of left side broken.

Skull was fractured, lungs punctured, heart punctured. Mouth fractured. In stomach undigested food particles found.

This witness has stated that the cause of death was due to hemorrhage and shock due to the above injuries caused by sharp cutting

weapon. He has identified the post-mortem report to be in his pen and signature, which was marked Exhibit-1.

9. P.W.-8 Rafail Murmu is the I.O of the case. He has stated that on 5.2.2005, he was posted at Kuchai Police Station. He heard rumor that near

the Rora hill, there was a dead body of a person, who had been murdered, whereupon he proceeded to the place of occurrence at 14:05 hours

and saw the dead body. He prepared the inquest report at 4:30 P.M and he recorded the fardbeyan of Nandi Soy , the wife of the deceased, and

started investigation on the basis of the fardbeyan. He has given the details of the place of occurrence, which is besides the hill and the dead body was found in an agricultural field. He recorded the statements of the witnesses and sent the dead body for post-mortem examination. He has stated that after completing the investigation, he had submitted the charge-sheet against three accused persons, keeping the investigation open against the rest of the accused. He has also stated that earlier one Kuchai P.S Case No. 1 of 2005 was lodged by the accused, Etwa Munda, in which the deceased was also an accused, and in that case also, he was the I.O. He has also stated that he had seen the blood stained soil at the place of occurrence, where the dead body was lying, but he had not seized the blood stained soil. He has denied the suggestion of making faulty investigation.

10. The statements of the accused were recorded under Section 313 of the Cr.P.C., wherein they have denied the evidence against them. The defence has examined one witness, who is a formal witness D.W.-1 Kartik Mahanty, an advocate clerk, who has proved the formal F.I.R and the endorsement on the fardbeyan, in Kuchai P.S Case No. 1 of 2005, lodged by the accused Etwa Munda, which were marked as Exhibits A & A/1.

11. Learned counsel for the appellant has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court below cannot be sustained in the eyes of law, in view of the fact that there was admitted enmity between the parties, and as such, the possibility of the false implication of the accused persons cannot be ruled out. It is also submitted that the main allegation of assault is against the co-accused, Etwa Munda, who had not faced the trial. It is submitted that even the formal FIR, the fardbeyan and the inquest report, have not been proved in the case, which makes the case absolutely doubtful. Learned counsel accordingly, submitted that it is a fit case, in which, the accused persons ought to been given the benefits of doubt, even though the witnesses have supported the prosecution case.

12. Learned counsel for the State on the other hand has opposed the prayer and has submitted that P.W.-1 Mangra Munda, P.W.-3 Nandi Soy and P.W.-4 Sukhram Munda, are the eyewitnesses to the occurrence, who have

fully supported the prosecution case, stating that all the accused persons had assaulted the deceased by sharp cutting weapon. P.W.-2 Lakhan Munda and P.W.-5 Sanika Munda are the hearsay witnesses, who had reached the place of occurrence and had also seen the dead body with sharp cut injuries and they were also informed about the occurrence that these accused persons along-with other co-accused persons had assaulted the deceased to death by sharp cutting weapons. The ocular evidence of these witnesses is fully corroborated by the medical evidence of P.W.-9 Dr. Pranav Kumar, who had found several cut injuries on the dead body of the deceased, which were sufficient in the ordinary course of nature to cause the death, and they also support the fact that the deceased was assaulted by several persons, as deposed by the witnesses. Learned counsel accordingly, submitted that the prosecution has been able to bring home the charge against the accused persons beyond all reasonable doubts, and there is no illegality in the impugned Judgement of conviction and Order of sentence.

13. Having heard learned counsels for both sides and upon going through the record, we find that the eye witnesses P.W.-1 Mangra Munda, P.W.-3 Nandi Soy, the informant and the wife of the deceased, and P.W.-4 Sukhram Munda, have fully supported the prosecution case stating that amongst the eight named accused persons, these accused persons were also present there, armed with farsa, thus, forming an unlawful assembly armed with deadly weapons, and all of them assaulted the deceased causing his death at the spot. The same information was given to the hearsay witnesses P.W.-2 Lakhan Munda and P.W.-5 Sanika Munda, when they came to the place of occurrence and saw the dead body of the deceased with injuries. The ocular evidence of these witnesses is fully corroborated by the medical evidence of P.W.-9 Dr. Pranav Kumar, and the post-mortem report proved by him as Ext.-1, who had found several sharp cut injuries on the dead body of the deceased and the injuries show that they were sufficient to cause death in the normal course of nature. Thus, the evidence on record clearly establish the fact that at the time of occurrence all the named accused persons, including these three appellants, were forming an unlawful assembly armed with deadly weapons, and in prosecution of the common object of the said unlawful assembly, the deceased

was brutally assaulted by all the accused persons, causing his death at the spot. It is true that the I.O., though examined in the case, has not proved the formal FIR, the fardbeyan and the inquest report in the case, but this appears only to be an omission by the prosecution, as the formal FIR and the fardbeyan were available on the record. The fact remains that the informant and the witnesses to the fardbeyan, had only put their thumb impressions on it, and the I.O., P.W.-8 Rafail Murmu has deposed about recording the fardbeyan and preparing the inquest report at the spot. There is no cross-examination of the I.O., doubting these documents. As such, even if there is omission on the part of the prosecution to prove these documents, it is not at all fatal to the prosecution. On the basis of the evidence on record, we find that the offences under Sections 148 and 302 / 149 of the Indian Penal Code are clearly made out against these appellants, and they have been rightly convicted and sentenced by the Trial Court below, for the same.

14. In view of the foregoing discussions, we do not find any illegality in the impugned Judgement of conviction dated 27.04.2007 and Order of sentence dated 28.04.2007, passed by the learned Additional Sessions Judge, F.T.C.-II, Seraikella, in S.T. No. 95 of 2005, convicting and sentencing the appellants Budhu Munda, Manga Munda and Sukram Munda, for the offences under Sections 148 and 302 / 149 of the Indian Penal Code, which, we hereby, affirm. All these three appellants, are in custody, undergoing the sentence.

15. There is no merit in this appeal and the same is accordingly, dismissed. Let the Lower Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgement.