
(2015) 03 JH CK 0118

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 361 of 2000

Dukhna Munda

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 34

Citation : (2015) 3 AJR 553 : (2015) 3 JLJR 154

Hon'ble Judges : Virender Singh, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : H.K. Shikarwar, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J—In all two accused faced trial, namely, Dukhna Munda and Sheo Dayal Munda, for the charge of Section 302/34 and 324/34 IPC. They were convicted for the charge of Section 302/34 IPC and acquitted for the charge of Section 324/34 IPC vide judgment of learned 1st Additional Judicial Commissioner, Ranchi dated 12th May, 2000, aggrieved thereof, they have filed instant appeal.

2. Record reveals that prayer for suspension of substantive sentence qua Dukhna Munda was rejected by the Court vide order dated 4th February, 2008, on which date the Court was informed that accused-Sheo Dayal Munda had died on 23.8.2005. Accordingly, the instant appeal stood abated and survived qua Dukhna Munda, who too, has now been released from jail aft serving his entire substantive sentence, including remissions, one finds from the report made available to us by the learned State counsel.

3. Be that as it may, the instant appeal qua accused Dukh Munda still requires to be considered on merits.

4. In short, the case of the prosecution, as one finds from the initial statement (Fardbeyan) of Baya Oraon recorded by the pole on 9th November, 1997, is that

on 8th November, 1997 at 8.00 p.m. both the accused-Sheo Dayal Munda and Dukhna Munda came his house and told his father-Etwa Oraon (hereinafter referred as "deceased") to go with them to their house to use black ma upon the wife of accused-Sheo Dayal Munda and on their request the deceased went with them to their house and when after half hour the informant went to the house of Sheo Dayal Munda, saw that accused - Sheo Dayal Munda and Dukhna Munda were sitting there. He asked the deceased to go back to his house and thereafter all the four persons left that place. It is further alleged that accused Sheo Dayal Munda and Dukhna Munda went ahead of him and the deceased and when the deceased reached near bridge, Sheo Dayal Munda assaulted him with Farsa, upon which his father (deceased) fell down and when he tried to save his father accused-Dukhna Munda assaulted with Farsa on him (deceased) and he caught hold of Farsa, resultantly, he also received injury to his left leg. He raised alarm, which attracted Chhotan Munda, also made an attempt to save the deceased and got an injury on his right eye and left hand. Occurrence resulted into the death of Etwa Oraon. On the aforesaid allegations, formal FIR came to be lodged in police station being Tatisilwai PS Case No. 45 of 1997.

5. After completion of the investigation, both the accused were put to trial and ultimately charged under Section 302 IPC and sentenced to rigorous imprisonment for life.

6. We may record here that the original counsel for the accused has not turned up to argue the main appeal and we also did not feel the necessity of engaging any counsel as "Amicus Curiae" to assist the Court as it would have further delayed the matter unnecessarily. Therefore, we have re-scanned the entire prosecution evidence minutely.

7. We do not feel the necessity of entering into the detailed discussions about all the eight prosecution witnesses as the case of the prosecution primarily rests upon the statement of Baya Oraon, the first informant. We are conscious of the fact that the prosecution has not been able to produce any medical evidence qua PW Chhotan Munda and even the first informant (PW-Baya Oraon) but the accused have been benefited on that count as they have earned acquittal for the charge of Section 324/34 IPC. This aspect, however, would not dislodge the statement of PW-Baya Oraon, so far as involvement of both the accused for the main charge of Section 302 IPC is considered. He is categorical in stating that both the accused had caused injury on the person of the deceased.

8. We have also perused the postmortem report, prepared by PW-Dr. Ajit Kumar Choudhary, who conducted autopsy on the dead body of the deceased and found that there are as many as six injuries on the person of the deceased and all these injuries are caused by sharp edged weapon. The injuries noticed by the doctor are reproduced as under:

Incised wounds

(i) 9 x 2 cm x bone deep on front and lower part of neck cutting the soft tissue,

blood vessels, esophagus, trachea and 5th cervical vertebra completely.

(ii) 8 x 2 cm x bone deep on front of neck middle part one c.m. above the preceding injury cutting the soft tissue, blood vessels, esophagus, trachea and 4th cervical vertebra completely.

(iii) 5 x 2 cm x bone deep on front of neck upper part 1 cm above the preceding injury cutting the soft tissue, blood vessels, esophagus, trachea and 3rd cervical vertebra completely.

(iv) 3 x 2 cm x bone deep over left thumb cutting the soft tissue and underlying bone completely.

(v) 5 x 2 cm x bone deep on back and lower part of left fore arm cutting the soft tissue, blood vessels, radius and ulna bone completely.

(vi) 6 x 1 cm x bone deep on left palm cutting the underlying bone completely. There was presence of blood and blood clot at the site of wound.

Internal

There was fracture of 6th to 9th ribs of left side with laceration of spleen. There was presence of blood and blood clot in the abdominal cavity. The internal organs were pale.

9. Appreciating the case of the prosecution in its totality as unfolded during trial, we are of the considered view that prosecution has been able to prove the charge of Section 302/34 IPC against both the accused, beyond any shadow of reasonable doubt. The net result is that the appeal on hand stands dismissed, being devoid of any merit in it.

10. Record in original be remitted back to the trial court.