
(2006) 05 JH CK 0037
In the Jharkhand High Court

Gobra Pradhan and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Another

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2007) 1 JCR 333

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Judgement

1. The appellants were arrayed as A-1 and A-2 in Sessions Trial No. 44 of 1993 before the Additional Sessions Judge, Seraikella. They have been charged u/s 302 read with 34, IPC which was framed against them with an allegation that at 8 a.m. on 17.8.1992, the second appellant Chaitan Pradhan @ Mangru Pradhan beat the deceased with a spade and that the first accused, Gobra Pradhan, who is the father of the second appellant, shared the common intention.

The trial Judge finding the appellants guilty as charged, sentenced each one of them to imprisonment for life and aggrieved by the said order of conviction and sentence, the present appeal is filed.

2. PW 3 Champa Pradhan is the wife of the deceased, Mahendra Pradhan. PW 1 Bharat Pradhan as the brother of the deceased. There was a dispute pending between the deceased and the appellants regarding a landed property and a civil suit was instituted at Seraikella. The suit was pending on the date of occurrence.

3. On 17.8.1992 at about 8 a.m. the deceased Mahendra Pradhan, his wife, Champa Pradhan (PW 3) and his brother, Bharat Pradhan (PW 1) were irrigating the field. They were taking the water through the paddy field of the first appellant, Gobra Pradhan, who is the uncle of the deceased. Gobra Pradhan accompanied by his son, Chaitan Pradhan @ Mangru Pradhan arrived at the place and the second accused, Chaitan Pradhan was having a spade in his hand. They told the deceased that he should not take water through their field but the

deceased insisted. At the time, the second appellant Chaitan Pradhan gave a blow with a spade which was in his hand and on receiving the said injury, Mahendra Pradhan fell down. He died thereafter. The occurrence was witnessed by PW 1 Bharat Pradhan and PW 3 Champa Pradhan, brother and wife of the deceased respectively. The fardbeyan, Ext. 3 was given by PW 3 on the basis of which a crime was registered. Ext. 4 is the formal FIR. The crime was taken up for investigation by PW 9, Bijay Kumar Singh, who conducted inquest by preparing inquest report, Ext. 5. A requisition was given to the doctor requesting him to conduct autopsy on the dead body.

4. On receipt of the said requisition and the dead body, PW 4, Dr. Yogendra Nath conducted autopsy on the dead body and he found the following injuries:

- i. 7 x 1-1/2 cm. x soft tissue over left shoulder back;
- ii. 2 x 1/4 cm. x soft tissue over left ear pinna;
- iii. 3x1/2 cm. x soft tissue over left temporal area just behind and close to the ear;
- iv. 4 x 2 cm. x bond deep over left temporal bone cutting the bone partially.

The doctor issued Ext. 2, the postmortem certificate with his opinion that death is on account of the above injuries.

5. After completion of the investigation final report was filed against the appellants who denied their complicity in the crime. They did not examine any witness on their side.

6. Learned Counsel appearing for the appellants contends that even if the facts are taken to be true, the first appellant, Gobra Pradhan is entitled for acquittal, as there is nothing to suggest that he shared the common intention of his son, Chaitan Pradhan @ Mangru Pradhan in beating the deceased leading to his death and since Chaitan Pradhan has caused injury, even according to the prosecution during a quarrel, he is to be convicted only u/s 304 Part I, IPC. We have heard learned Counsel appearing for the State.

7. The cause of death of Mahendra Pradhan is not in dispute. The same stands proved through the evidence of the doctor (PW 4) who conducted autopsy and who issued the post-mortem certificate, Ext. 2. We on the medical evidence hold that Mahendra Pradhan died on account of homicidal violence.

8. PW 1, Bharat Pradhan, who is the brother of the deceased and PW 3, Champa Pradhan, who is the wife of the deceased gave evidence before the Court and stated that while they and the deceased were irrigating their land the appellant reached the place and questioned of the deceased in taking water through their field. According to them while they were questioning the deceased the second appellant Chaitan Pradhan suddenly beat him with the spade which was in his land and due to that injury Mahendra Pradhan died. The evidence of PWs. 1 and 3, being convincing and cogent, we find no reason to reject their evidence. Their

evidence Is also supported by the medical evidence. We accept their evidence and hold that the second appellant, Chaitan Pradhan inflicted injury on the deceased.

9. We will now consider the nature of the offence committed by the first appellant, Gobra Pradhan. The facts which we have noted above show that the deceased was beaten by the second appellant, with a spade when an argument was going on between the parties as regards taking water through the field of the appellants. There is no material to suggest that the second appellant went to the place with a spade only with a view to beat the deceased. On the contrary, the facts show that the second appellant was having spade in his hand and finding the deceased taking water through his field questioned him, and while they were engaged in a heated argument, the second appellant beat the deceased on the head as a result of which he died. We are therefore, of the view that the second appellant inflicted the said injury on the deceased without any premeditation and hence he is entitled for the benefit of Section 304 Part I, IPC. Accordingly, we set aside the conviction of the second appellant, Chaitan Pradhan @ Mangru Pradhan u/s 302, IPC and instead find him guilty u/s 304 Part I, IPC for which he is sentenced to 7 years RI. It is reported that Chaitan Pradhan is in jail. If he has already served the period of sentence imposed by this Court the same will be given set off.

10. As regards the first appellant, Gobra Pradhan, we find that there is absolutely no material before us to hold that he shared the common intention of his son. Chaitan Pradhan. The facts show that he was present along with his son and questioned the deceased for taking water through his field and at that time, the second appellant, Chaitan Pradhan suddenly beat the deceased with a spade and in the circumstances, the first appellant could not ; have expected that the second appellant will beat the deceased with a spade. We therefore, hold that he did not share the common intention of the second appellant.

We therefore, set aside his conviction and sentence by setting him at liberty. He is discharged from his bail bonds.

11. With the above modification in conviction and sentence the appeal is disposed of.