
(1997) 12 CAL CK 0040
In the Calcutta High Court
Case No : Criminal Appeal No. 410 of 1990

Hawa Hembram and Others	Vs	APPELLANT
State of W.B.		RESPONDENT

Date of Decision : 05-12-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (1998) CriLJ 3990

Hon'ble Judges : Surya Kumar Tiwari, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : J.N. Ram and Runu Mukherjee, for the Appellant;M.P. Mukherjee, for the Respondent

Judgement

Surya Kumar Tiwari, J.—This appeal is directed against the conviction and sentence recorded by Shri A.K. Dasgupta, Sessions Judge, Malda, in Sessions Trial No. 11 of 1990.

2. The following facts are not in dispute in this appeal :

Accused Hawa Hembram, appellant No. 1, died on 4-10-1990, as per report of the Jail authorities. The three appellants (including the deceased Hawa Hembram) are brothers. P.W. 3 Joshef Murnu is the cousin of the appellants". P.W. 1 Sanjali Sorcn is the wife of P.W. 3 Joshef Murmu. Deceased Marangmayee was the sister and deceased Moti Tudu was the mother of P.W. 3 Joshef Murmu.

3. The case of the prosecution is that accused Hawa Hembram (since dead) had a son and a daughter who had been ailing for some time. He called one Domon Kabiraj (A witch doctor) who treated them and told accused Hawa that Moti Tudu and Marangmayee were responsible for the illness of the two children. Ft is because of their witchcraft that the children were ailing. On the same day the two children expired.

4. After the death of the two children, the appellants were convinced that the two deceased women were responsible for their death. Marangamayee aud Moti

had gone out to work in the field. In the evening Moti returned home but Marangamayee went to market with some other villagers. While returning home, she was done to death in the way in presence of the villagers. In the evening deceased appellant Hawa Hembram came to the house of Joshef and he told that the deceased Moti Tudu was a witch and that she was required to go along with him for clarification before village Panchayat. Deceased Moti Tudu was taken in front of the school. The three appellants started assaulting her by means of stick. P.W. 1 Sanjali Soren saw the incident and ran-back to her house out of fear. Thereafter Moti Tudu did not return home. Sanjali, after spending night at home, went to her father's house in the morning. Her husband was already there. She informed her husband about the incident. Both of them proceeded to Bamangola P.S. on 6-6-1987 and lodged F.I.R. at 17.45 hours. P.W. 10, S.K. Mukherjee, Sub Inspector of Police recorded F.I.R. He also seized a silver Bangle produced by P.W. 1 Sanjali Soren which belonged to deceased Marangmayee and was handed over to her by accused Ganesh on the date of incident. The Sub Inspector visited the place of occurrence and prepared a sketch map. The three appellants could not be apprehended on that day. The mother of appellants who goes by the name of Marangmayee was questioned and she agreed to show the place where the dead body of the two deceased women had been buried. Accused Marangmayee also produced the stick by which injuries were inflicted on the person of deceased Moti Tudu. The same was seized in presence of the B.D.O. and witnesses. The dead body of deceased Moti Tudu and Marangmayee were exhumed. The inquest report was prepared and the dead bodies were sent to Malda Hospital for post-mortem examination through Constable.

5. P.W. 7, Dr. Ajoy Kumar Das, performed autopsy on the dead body of the two deceased women. He found the following injuries on the person of deceased Moti Tudu :-

- (1) Abrasion 4" x 2" at middle of anterior abdominal wall;
- (2). Abrasion 3" x 2" anterior lateral aspect of middle of left thigh;
- (3). Abrasion 2" x 1" at lower part of anterior aspect of the neck;
- (4). Abrasion 3" x 1" at lower part of anterior aspect of the neck;
- (5). Bone deep lacerated injury measuring 3" x 2" on the occipital region of scalp with fracture of occipital bone and brain matter was out;
- (6). Fracture of both parietal bone;
- (7). Fracture of frontal bone;
- (8). Fracture of both jaws.

6. The following injuries were found on the body of deceased Marangmayee :-

- (1). Bone deep lacerated injury 3" x 2" at occipital region of the scalp with fracture of occipital bone and the brain matter was out;

(2). Bone deep lacerated injury 1 1/2 parietal region of scalp with fracture of left parietal bone;

(3). Abrasion 3" x 2 1/2" at middle of upper part of anterior chest wall;

(4). Abrasion 2" x 2 1/2" at left side of upper part of back;

(5). Lacerated injury 1 1/2 x 1/2 skin deep at middle of anterior aspect of left leg.

7. The doctor opined that the injuries on the bodies of the two deceased women were sufficient in the ordinary course of nature to cause death. Their blood stained four wearing apparels were seized on 9-6-1987. After completing investigation charge-sheet was filed against five, persons including three appellants. The Id. Sessions Court framed charges u/s 364/34, 302/34 and 201 against all the accused person. They pleaded not guilty.

8. The Id. trial Judge convicted accused Hawa Hembram under Sections 302/34, 364 and 201, I.P.C. The two other appellants were convicted under Sections 302/34 and 201, I.P.C. Each of the appellants were sentenced imprisonment for life u/s 302/34, I.P.C. They were sentenced to three years R.I. and to pay a fine of Rs. 1,000/-, in default one year R.I. u/s 201, I.P.C. The deceased Hawa Hembram was sentenced to suffer rigorous imprisonment for five years and with fine of Rs. 2,000/- u/s 364, I.P.C. Hence this appeal.

9. Since deceased Hawa Hembram is already dead, case against him abated. We shall, therefore, consider the cases only so far as appellant Ganesh Munshi and Munshi Hembram are concerned.

10. The first point that arises for decision is whether Moti Tudu and Marangmayee are dead? P.W. 1 Sanjali Soren has deposed that her mother-in-law was taken by the accused Hawa Hembram near the School building and that she was assaulted by the three appellants with sticks and thereafter she never returned home. She has also stated that her sister-in-law Marangmayee had gone to the field in the morning but she did not return thereafter. PW-2 Mungli Mardi, PW-4 Sami Tadu and PW-6 Fulu Baskey have stated that while they were returning from Khutadaha that along with Marangmayee, accused Ganesh, Hawa Hembram and Munshi Hembram attacked her in the way and assaulted her mercilessly. From the statements of PW-10 S.K. Mukherjee, Sub-Inspector, the dead bodies of the two deceased women were exhumed from the place shown by one of the accused Marangmayee (since acquitted). PW-7, Dr. Ajoy Kr. Das has deposed that he had performed autopsy on the bodies of two women who had met with homicidal death. We, therefore, have no hesitation in holding that Moti Tudu and Marangmayee are dead.

11. The next point for consideration is whether their death was homicidal: in nature? PW-7 Dr. Ajoy Kr. Das, has stated that deceased Marangmayee sustained as many as five injuries and Moti Tudu had sustained eight injuries on her person. That the injuries were homicidal in nature. The fact of homicidal death is not challenged by the Id. counsel for the appellants during the course of

arguments.

12. Then we have to consider whether the injuries sustained by the two women were caused by the appellants? PW-1 Sanjali Soren has deposed that the appellant Hawa Hembram called his mother-in-law, a witch and took her for Salish. When the deceased Moti Tudu reached in front of the School building, three appellants started beating her with stick.

13. The Id. counsel for the appellants has urged that the petitioner had not stated the source of light which facilitated her to see the incident and identify the assailants. It is not disputed that the accused persons are related to witnesses and when there was a school building some light was bound to be there. This witness in her cross-examination clearly stated that it was not so dark when she saw the incident. Villagers who are not used to electric light, their eye sight gets conditioned and can identify in the light shed of even lantern, Machhi Singh and Others Vs. State of Punjab, . If the accused persons were known to the witnesses from before, they could easily be identified even in the absence of sufficient light. Hence there was no question of mistaken identity.

14. Now, we come to the evidence regarding the injuries sustained by the deceased Marangmayee. FW-2 Mungli Mardi has deposed that the deceased Marangmayee had accompanied him to Khutadaha that on the fateful day. On the way back home, she was assaulted by Accused Hawa Hembram, Ganesh Munshi and Munshi Hembram. When the assault started, the witness took to his heels. He has been corroborated by PW-4 Sami Tudu and PW-6 Fulu Baskey. There is no material contradiction in the statements of these witnesses. Naturally when accused persons started beating the deceased; deceased Marangmayee, the witnesses were not supposed to wait and watch the incident without being hit by the accused persons. It was natural for them to run away for their own lives. The Id. Judge of the trial Court who had opportunity to watch the demeanour of the witnesses has rightly believed these witnesses. We, therefore, hold that the injuries on the dead bodies of the deceased Marangmayee were caused by the three appellants.

15. Then we have to consider whether the injuries were sufficient in the ordinary course of nature to cause death. The deceased Moti's injuries No. 5 to 8 were on the vital parts of the body. Injury No. 1 was on the occipital region which had penetrated into the brain and the brain matter had been cut. There was also fracture on the frontal bone and parietal bone and also both jaws. Similarly injuries Nos. 1 and 2 on the body of Marangmayee were on occipital and parietal regions which resulted into fracture of occipital and left parietal bone. Injury No. 1 had also cut the brain matter which caused her death. Hence the doctor has rightly opined that the injuries sustained by the two women were sufficient in the ordinary course of nature to cause death.

16. The Id. counsel for the appellants has rightly contended that there is no evidence on record to show that the dead bodies were buried or made to

disappear by the appellants. According to prosecution, the place where the dead bodies were buried was pointed out by accused Marangmayee who has since been acquitted. The prosecution has not examined any witness to prove that the appellants had buried the dead bodies. We, therefore, find that it cannot be said that the accused persons were responsible for disappearance of a material evidence. Hence prosecution has failed to prove offence u/s 201,1.P.C. against the appellants.

17. The Id. counsel for the appellants has invited our attention to the deposition of PW-7 Dr. Ajoy Kr. Das, wherein the doctor had opined that the death of Marangmayee had occurred between 7 p.m. and 11 p.m., which does not conform to the statements given by PW-2 Mungli Mardi, PW-4 Sami Tudu and PW-6 Fulu Baskey according to whom the incident had taken place before sun-set. It is well known that medical science is not an exact science. (see *Pratap Misra and Others Vs. State of Orissa*, . Any medical opinion regarding the time of death cannot be taken as a gospel truth. Hence the version given by PWs-2 Mungli Mardi, PW-4 Sami Tudu and PW-6 Fulu Baskey cannot be disbelieved simply because it is in conflict with medical opinion.

18. The next contention of the Id. counsel for the appellants is that the prosecution failed to establish the actual place of occurrence. The places have not been fixed by filing maps prepared by a competent person. We are of the view that it does not in any way affect the merits of the case. The counsel for the appellants then contended that doctor has not been shown the stick and questioned as to whether the injuries sustained by deceased Moti Tudu could be caused by the stick? Lacerated wounds and abrasions could be caused by any hard and rough substance. Hence omission to show the stick does not affect strength of the prosecution case.

19. The Id. counsel for the appellants lastly cited the case of, *Sharad Birdhichand Sarda Vs. State of Maharashtra*, and has urged that PW-1 Sanjali Soren is a close relative of deceased. Close relatives being interested witness have a tendency to exaggerate or add facts and Court should examine their evidence with great care and caution. The version given by PW-1 Sanjali Soren is in conformity with the FIR lodged by her in the police station. Relatives in each case are not interested witnesses. Interested witness is one who somehow or the other wants to secure conviction of accused because he has some animus. There was no previous enmity between the accused persons and the prosecution witnesses (*Sec Mst. Dalbir Kaur and Others Vs. State of Punjab*,

20. In the result the appeal is partly allowed and the appellants are acquitted of the charge under Sections 201/34, I.P.C. and their sentence is hereby set aside. The convictions and sentences passed u/s 302/34, I.P.C. are hereby confirmed.

Kalyan Jyoti Sengupta, J.

21. I agree.