
(2016) 04 JH CK 0198

In the Jharkhand High Court

Case No : Cr. Appeal(DB) No. 346 of 2007 (Against the judgment of conviction and order of sentence dated 26th February, 2007 and 28th February, 2007 respectively passed by Additional Sessions Judge, F.T.C.-I, Ghatshila in connection with Sessions Trial Case no. 351

Katai Hansda

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2016) 3 ECrC 725 : (2016) 3 JCR 527 : (2017) 1 PCCR 14

Hon'ble Judges : Mr. D.N. Upadhyay and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. Soumitra Baroi, Advocate, for the Appellant Nos. 1, 3 & 4; Miss. Suchitra Pandey, Amicus Curiae, for the Appellant No. 2; Mr. Krishna Shankar, Addl. P.P, for the Respondent

Final Decision : Dismissed

Judgement

Mr. D.N. Upadhyay, J.—This criminal appeal has been directed against the judgment of conviction and order of sentence dated 26th February, 2007 and 28th February, 2007 respectively passed by learned Additional Sessions Judge, F.T.C.-I, Ghatshila in connection with Sessions Trial Case no.351 of 2002 corresponding to G.R.Case no.250 of 2002 arising out of Bahragora P.S. Case no.41 of 2002, whereby the appellants have been held guilty for the offences punishable under sections 147, 148, 302 read with section 149 of Indian Penal Code and sentenced to undergo rigorous imprisonment for life for the offences punishable under sections 302 read with section 149 I.P.C. No separate sentence for the offences punishable under sections 147 and 148 I.P.C. has been inflicted against the appellants.

2. The facts, in brief, are that on the date of occurrence i.e. on 11.07.2002 at about 9.30 A.M., the appellants in order to take forcible possession over the land

in question were ploughing the field. It is disclosed in the F.I.R. that the land in question was all along in possession of deceased and he had purchased the same through registered deed of sale. He had been enjoying his possession since the date of its purchase i.e. since the year 1988. It is disclosed that since last 2-3 years, the appellants at the instigation of Gopal Hansda (appellant no.4) had started causing hindrance against peaceful possession of the deceased over the land. The ploughing of the field by the appellants was noticed by a village boy, who informed the matter to informant and his father. Thereafter the informant with his father-Sukumar Bhuiya(deceased) went to the place of occurrence. Sukumar Bhuiya raised objection against ploughing of the field and requested to get the matter settled in the Panchayat or in the office of Circle Officer, but the appellants were bent upon to have forcible possession over the land in question. It is alleged that appellant-Gopal Hansda instigated other appellants and their associates to give a lesson to Sukumar Bhuiya otherwise he would not be stopped. Thereafter, Singhrai Hansda @ Shigrai Hansda (appellant no.2) ran towards Sukumar Bhuiyan and wrapped the towel around his neck and then pulled him down with the help of towel. Appellant-Gopal Hansda instigated the remaining accused, who started assaulting Sukumar Bhuiya by means of Lathi. In course of assault, Gopal Hansda gave blow by means of spade on the head of Sukumar Bhuiya as a result he sustained injury. Considering the situation grave, the informant raised alarm and ran towards village, but he was chased by the appellants till the villagers assembled and thereafter appellants with their associates fled away from the place of occurrence.

On the basis of fardbeyan of Rabindranath Bhuiya, Bahragora P.S. Case no. 41 of 2002 dated 11.07.2002 under sections 147, 148, 149, 323, 324, 302 and 120B I.P.C. against Lepo Hansda including appellants was registered.

The police, after due investigation, submitted charge sheet against the appellants. Accordingly cognizance was taken and the case was committed to the court of Sessions and registered as Sessions Trial no. 351 of 2002.

3. Charges under section 147, 148, 120B, 302/149 I.P.C. were framed against the appellants to which they pleaded not guilty and claimed to be tried.

To substantiate the charges, the prosecution has examined altogether fourteen witnesses, including Informant(P.W.4), the doctor, namely, Dr. A.K. Choudhary (P.W.13), who had conducted post mortem examination on the dead-body of Sukumar Bhuiya.

Learned Additional Sessions Judge, at the conclusion of trial, placing reliance on the evidences and documents available on record, held the appellants guilty and inflicted sentence as indicated above.

4. The appellants have challenged the findings of trial court on the ground that informant is not an eye witness, but he has projected himself as eye witness. According to statement of Putki Tudu (P.W.2) and Tempa Charan Tudu(P.W.3), who happens to be the husband of P.W.2, has said that except his wife, nobody

else had witnessed the occurrence. Machi Ram Hembrom(P.W.1), Balram Bala(P.W.5) and Jitwahan Jana(P.W.10) are the hearsay witnesses and they have given hearsay account of the occurrence, which they had received from other witnesses. Lambodar Dandpat(P.W.7), Shibu Murmu(P.W.11) and Permishwar Hembrom(P.W.12) have turned hostile and they have not supported the prosecution case. Therefore, prosecution case is hinging on the evidence of informant(P.Ws.4, 6 and 8), who have claimed themselves to be the eye witnesses. The informant in his cross-examination says "Hamare Saath Us Samoy Koi Byakti Nahi Aya Tha". If the version of informant is correct, P.Ws. 6 & 8 had not seen the occurrence. If the version of P.W.3 is correct, none of the aforesaid eye witnesses were present at the place of occurrence. There are contradictions in the statement of aforesaid three witnesses. Sada Nand Bera(P.W.8) has not named the appellants rather he has said quarrel between the Sukumar Bhuiya and Katai Hansda was going on. He had stopped his by-cycle and seen the incident. In the meantime, one of the accused caused injury on the head of Sukumar Bhuiya by means of spade. In his cross-examination, he says that he could identify only Gopal Hansda, but he did not say that it was Gopal Hansda, who inflicted blow by means of spade on the head of deceased. The so-called eye witnesses have failed to pinpoint the place of occurrence and that is fatal to the prosecution because Investigating Officer has not been examined. Formal F.I.R. and endorsement made over the same have been proved by Advocate Clerk-Ashok Ranjan Sarkar(P.W.14). The contradictions taken from the witnesses could not be referred to the I.O. because he had not appeared to depose and that has caused prejudice to the appellants.

5. Learned counsel has further submitted that assemblage of the appellants at the place of occurrence was to plough the field to which they had been claiming from before. It could not be said that assemblage of the appellants at the place of occurrence was unlawful. Likewise, common object of said assembly was to take possession over the field in question. It is incorrect to say that common object of said assembly was to commit murder of Sukumar Bhuiya. According to evidence on record, Sukumar Bhuiya came to the place of occurrence and raised objection against ploughing of the field. One of the appellants, namely, Singhrai Hansda @ Shigrai Hansda had scuffled with him, but thereafter he did nothing. It was Gopal Hansda(appellant no.4), who inflicted Spade blow on the head of Sukumar Bhuiya and that proved fatal and, therefore, all the appellants are not liable to be punished under section 302 I.P.C. with the aid of section 149 I.P.C. Learned Trial Judge has mis-appreciated the evidence and wrongly recorded the order of conviction and sentence, which could not be upheld.

6. Learned Addl. P.P. has opposed the argument and submitted that land in question was all along in possession of the deceased after it was purchased by him through registered deed of sale. He had been enjoying his peaceful possession over the same, but at the instigation of Gopal Hansda(appellant no.4), remaining appellants started causing hindrance and they had created disturbance one year before the occurrence when paddy crop was likely to be

harvested. The appellants were bent upon to take forcible possession over the land in question and with that intention they had assembled with lathi etc. They had started ploughing knowing fully well that objection from the side of the informant party would be raised and for that they had come prepared. Since the appellants had assembled with illegal purpose to have forcible possession over the land in question, their assemblage was unlawful. It is submitted, when Sukumar Hansda made protest against ploughing of the field, one of the appellants, namely, Singhrai Hansda @ Shigrai Hansda ran towards him and wrapped the towel around his neck and then pulled him down. Thereafter remaining appellants and their associates started assaulting the deceased by means of lathi, which they were having in their possession. In course of assault, Gopal Hansda gave blow by means of spade on the head of deceased and that proved fatal. The utterance made by Gopal Hansda at the time of occurrence is sufficient to attract section 149 I.P.C. because all the appellants and their associates participated in causing assault to the deceased.

7. All the three eye witnesses have clearly stated that quarrel between Sukumar Bhuiya and Katai Hansda was going on. In the meantime, the appellants started assaulting Sukumar Bhuiya and one of the accused-Gopal Hansda inflicted blow by means of spade on his head. The informant happens to be son of the deceased and he has lodged detailed F.I.R. He has fully supported the prosecution case in court. P.Ws. 6 & 8 are independent witnesses and they have corroborated the version of informant. There is no reason to disbelieve them. The hearsay witnesses have also supported the prosecution case and they have deposed whatever they heard about the occurrence. Dr. A.K. Choudhary (P.W.13) has proved the Post Mortem report and it is not a case that only one injury on the person of deceased was found. Since the other appellants had also participated in assault, the deceased had sustained further injuries on his person, which have been described by the doctor. Blood stained soil, black Sandal of the deceased were seized from the place of occurrence. The inquest report was also prepared at the place of occurrence. The witnesses to the seizure and witnesses to the inquest have proved their signatures appearing on those documents. The prosecution has well proved its case and there is no merit in this appeal.

8. We have considered the rival submission and perused the case records. So far as evidences of P.Ws.3 and 2 are concerned, P.W.3 has said, till he was present at the place of occurrence, no person of the vicinity had reached there. In paragraph-1, he says that at the time of assault, only his wife (P.W.2) was present but P.W.2 did not corroborate this fact rather she says "Ghatna hote samoy ghatna asthal par annya logo ka nam mai nahi bata sakti hoo kis gaon ke the nahi bata sakti lakin bahaut sare admi the". In view of evidence of P.W.2, it is clear that people of the vicinity had assembled at the time of occurrence and, therefore, such argument that except P.W.2, nobody else had seen the occurrence is not correct. Again it was submitted that informant (P.W.4) has stated that he was not accompanied by any of the villager and that goes to show that P.Ws.6 & 8 had not witnessed the occurrence. We do not find force in the

said argument because that contention was made in different context. He has said that when he was going to the house of chawkidar at that point of time, he was not accompanied by any one. So far as occurrence is concerned, he has clearly stated that he along with his father-Sukumar Bhuiya had gone to the place of occurrence when they could learn that the appellants had been ploughing their land. He has deposed that when his father was raising objection against ploughing of the field, appellant-Singhrai Hansda @ Shigrai Hansda had made an attempt to strangulate him with the help of towel by wrapping around his neck, but again with the help of said towel he pulled the deceased down. Thereafter remaining appellants, namely, Ramdas Hansda and co-accused-Nepo Hansda started assaulting him by means of lathi. Gopal Hansda(appellant no.4) gave blow by means of spade on the head of the deceased. The informant then raised alarm and ran towards village, but the appellants tried to chase him till the villagers assembled. We find that informant has fully supported his contention made in the F.I.R. Admittedly, the land dispute between the parties had been prevailing. As per evidence of P.W.4, his father had requested the appellants on the date of occurrence and also prior to that to get the matter settled before the Panchayat or in the office of Circle Officer, but they did not agree. Needless to mention that enmity cuts both ways. P.Ws. 6 & 8 have also given similar statement regarding occurrence as given by informant in his fardbeyan and in his deposition in court. Aforesaid two witnesses have stated that they had seen the appellants causing assault to Sukumar Bhuiya. In the meantime, Gopal Hansda(appellant no.4) inflicted blow on the head of the deceased by means of spade and thereafter they fled away. The oral version of aforesaid three eye witnesses finds support from the post mortem report(Ext.4) and evidence of Dr.A.K.Choudhary(P.W.13). Besides the head injury, the doctor had noticed other injuries on the person of the deceased, which were on left ear pinna and leg. On dissection, fracture of left temporal and both parietal bones of skull with mild subdural blood all over brain were noticed. We find that ocular evidence brought on record by the prosecution finds support from the medical evidence given by P.W.13.

9. The appellants did not examine any witness in their defence or in support of their contention that land in dispute belongs to them and they had been enjoying possession over the same. On the other hand, the witnesses examined on behalf of the prosecution have categorically stated that land in question was in possession of the deceased since the year 1988 and he was in cultivating possession of the same. Since last 2-3 years at the instance of Gopal Hansda, remaining appellants had started causing disturbance both at the time of sowing paddy and also at the time of harvesting it. The appellants did not prove by adducing evidence that they were enjoying possession over the land in question and on the date of occurrence, with that right, they had been ploughing the field. The evidence on record suggests that the appellants had been to the field to take forcible possession because one day prior to the date of occurrence some altercation between the parties had taken place. The evidence on record further

led to a fact that they were having lathi at the place of occurrence. When Sukumar Bhuiya made protest against ploughing of the field, Singhrai Hansda @ Shigrai Hansda(appellant no.2) ran towards him and pulled him down on the earth and thereafter the appellants joined hands and started assaulting Sukumar Bhuiya by means of lathi. In course of assault, Gopal Hansda inflicted blow by means of spade on the head of the deceased. The assemblage of the appellants at the place of occurrence and their participation in causing assault by means of lathi and spade clearly suggest that with what intention they had assembled at the place of occurrence. It is apparent from the evidence that the appellants had assembled at the place of occurrence for unlawful purpose, they were having Lathi in their possession, when protest by the deceased was made against ploughing, they killed him at the spot. Therefore, each and every member of that unlawful assembly were knowing that offence is likely to be committed in prosecution of their common object. At the instigation of Gopal Hansda, all the appellants jointly participated in causing assault to deceased and killed him. The learned trial judge has rightly held the appellants guilty under section 302 with the aid of section 149 I.P.C. We are not inclined to interfere with the finding of the trial court. Accordingly, this appeal stands dismissed. The bail bond of the appellant no.1-Katai Hansda and appellant no.3-Ramdas Hansda stands cancelled. They are directed to surrender before the court below to serve out sentence inflicted against them, failing compliance, the convicting/successor court shall issue process to secure their attendance, so that they may serve the sentence.