
(2003) 05 JH CK 0028

In the Jharkhand High Court

Case No : Criminal Appeal No. 38 of 1991 (P)

Parme Hansda and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 05-05-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 342

Citation : (2003) 2 JCR 727

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : K.K. Ojha and S.N. Sarswati, for the Appellant; A.B. Mahato, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan Prasad, J.—This criminal appeal is directed against the judgment of conviction dated 7.11.1990 and order of sentence dated 8.11.1990 passed by Shri Sheo Dayal Prasad, Additional Sessions Judge, Pakur, Sahibganj in Sessions Case No. 153 of 1988/79 of 1989, whereby and whereunder, the learned Additional Sessions Judge convicted both the appellants for the offence u/s 304 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years each. They were further convicted u/s 342 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for one year each. However, the sentences were ordered to run concurrently.

2. The prosecution case in brief is that Jharia Kisku, father of the informant, had gone to Simlong Hatia on Monday and when he did not return by night, then on the next day at about 8 a.m., Parme Hansda (appellant No. 1) informed him that his father Jharia Kisku was caught while he was committing theft of one Bail in his house in the night of Monday and thereafter he was tied with rope. Thereafter the informant and others went to Baraghaghari and they found Jharia Kisku tied at the house of the Pradhan. On their arrival a Panchayati was called for. It was stated that after committing theft of one Bati, Jharia Kisku was trying to flee

away and thereafter he was caught and he was assaulted and tied by rope. A sum of Rs. 100/- was also fined by Panchayat. On enquiry from Jharia Kisku, it is found that he was brutally assaulted by the appellants by Lathi and danda by leveling false allegation of theft against him and he was tied with rope. The first information report was lodged accordingly. The police investigated into the case and submitted charge sheet in the case against the appellants. The appellants appeared before the Additional Sessions Judge where charge was framed under Sections 342 and 304 of the Indian Penal Code to which they pleaded not guilty.

3. Although ten witnesses have been examined on behalf of the prosecution. P.Ws. 2, 4, 7 and 8 are consistent in their deposition that Jharia Kisku was brutally assaulted by the appellants by putting false allegation for committing theft of one Bati. The said witnesses when reached to the spot found Jharia Kisku tied with rope and also injuries on his person, establishing the whole prosecution case for assaulting Jharia Kisku by the appellants and also tying him with rope. It has come in evidence that then Jharia Kisku was brought in his house he died on the way near the house of Ram Lal. Jharia Kisku himself stated before all the villagers including his son after the appellants had assaulted him with lathi and danda brutally, and this statement has fully been corroborated by the medical evidence itself. The Doctor (P.W. 9) who held post mortem found as many as five injuries on the person of Jharia Kisku, which reads as under :--

"(i) One lacerated wound on right forearm ulna side measuring 2" x 1/2" x Bone deep.

(ii) One lacerated wound on left lower leg 5" below knee joint measuring 1" x 1" x Bone deep.

(iii) One abrasion on left side of forehead measuring 1" x 1".

(iv) Parietal bone of right side of head fractured and depressed.

(v) Ligature mark on both areas.

The cause of death was due to injury No. (iv). Time elapsed since death about 48 hours".

4. Mr. K.K. Ojha, learned counsel appealing on behalf of the appellants submitted that there is much contradictions in the evidence of the witnesses as well as there is no eye witness of the occurrence. It is further argued that the Investigating Officer has not been examined in the case.

5. From perusal it is apparent that the witnesses, namely, P.Ws. 2, 4, 7 and 8 are very consistent about the occurrence and found the deceased in tied and injured condition. There is specific allegation that the appellants assaulted the deceased with lathi and danda on the false allegation about committing theft of one Bati and that allegation has also been fully corroborated by the medical evidence (P.W. 9). Non-examination of the Investigating Officer will not in any way prejudice the case of other side as the witnesses are very reliable and to the

point and the medical evidence are corroborating the same. In this view of the matter, the Court below rightly passed the judgment convicting the appellants for the offences because the prosecution has fully established the charges against the appellants for the offences beyond all reasonable doubts.

6. In the result, I do not find any merit in this appeal, which is, accordingly, dismissed. The judgment of conviction and order of sentence passed by the learned Trial Court/Additional Sessions Judge, Pakur, Sahebganj in Sessions Case No. 153 of 1988/79 of 1989 are confirmed. The appellants are on bail. Their bonds are cancelled. They are directed to surrender in the Trial Court to serve out the remaining period of sentence, failing which, the Trial Court shall take appropriate steps for their appearance.