
(1963) 08 PAT CK 0003
In the Patna High Court

Prithwi Murmu and Another APPELLANT
Vs
The State RESPONDENT

Date of Decision : 21-08-1963

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (1963) 08 PAT CK 0003

Hon'ble Judges : G.N. Prasad, J; Anant Singh, J

Bench : Division Bench

Judgement

Anant Singh, J.—The two appellants, Prithwi Murmu and his nephew, Mangal Murmu have been convicted u/s 302 of the Indian Penal Code, and sentenced to life imprisonment for having jointly committed two murders, one of Doman, uncle of appellant Prithwi, and another, of another Mangal,. son of Doman. They have further been convicted u/s 323 of the Code for causing hurt to Ram Murmu (P. W. 10), brother of Doman, but no separate sentence has been passed on this count,

2. The date of occurrence, as alleged, was. about 3 p.m. on the 27th July, 1960, and the place... the courtyard of the deceased, situate in Mouza Dumra, some fifteen miles away from police station Boarijore in the district of the Santal Paraganas.

3. The facts of the case, briefly stated, are as follows: There is a piece of land bearing plot No. 15S of Jote No. 12 situate at a distance of three-fourth of a mile from the house of the deceased. There-was some dispute about this land between the-deceased on one hand and the appellants on the other. There was also a litigation pending about it. On the date of the occurrence the two deceased-were ploughing a portion of the aforesaid land for paddy transplantation, and Maidi Tudu (P. W. IV and Dongi Murmu (P. W. 2), the wife and the daughter respectively of deceased Doman were uprooting paddy seedlings which had been sown in a portion of the same plot. It is said that sometime in the afternoon, the two appellants arrived at the spot and objected

to the ploughing of the field by the two deceased. There was some altercation when the two deceased refused to stop ploughing. Some threats were thereafter held out to them by the appellants. The deceased for fear left for their home, moving briskly, and they were followed by the two appellants who were armed with lathis. F. Ws. 1 and 2 also followed behind the two appellants. Deceased Mangal had just entered" his courtyard when he was attacked by appellant Prithwi with a lathi, which was thrown on him and which hit him on his right side Panjri. As a result of the blow, he fell down when both the appellants assaulted him with their respective lathis Doman, thereafter, intervened and tried to save his son, but he was also assaulted by both the appellants with their lathis. He also fell down. Ram Murmu (P. W. 10), elder brother of Doman, who was present in his room situate in the same Angan from before, had also come out and he also intervened when he was similarly assaulted by both the appellants. He also fell down in the courtyard. The wife and daughter of Doman (i.e. P. Ws. 1 and 2) had arrived when the various assaults were being made by the two appellants on the above three persons. Mosstt. Jasmi Murmu (P. W. 3), a neighbour, on hearing hulla, had rushed to the house of the deceased and she was also pushed back by appellant Mangal when, she had tried to intervene. Some more persons, came on hulla and among them were Fagu Hem brom (P. W. 6 tendered), Saukhi Hembrom (P. W. 8) and Sawrena Soren (P. W. 14). They had seen the appellants running away with their lathis. Maidi "Tudu (P. W. 1) went to the local Pradhan, Bhola Tudu (P. W. 16), who had returned by that time to his house from his field, which was a little away from the paddy field where the trouble had started. She informed him of the whole occurrence. She also visited Choukidar Bawana Chatwal (P. W. 15) -a his house and informed him about the occurrence. They all came to the house of P. W. 1, where they were apprised of the whole occurrence, by those who had seen it. They also saw the three injured persons lying at one place or the other in the courtyard. Mangal, however, died at about evening time. Maidi Tudu (P. W. 1), Munsii Marandi (P. W. 12), Suphal Hansda (P. W. 13) and Bawna Ghatwal (P. W. 15) left for the thana, and having had rest for some time on the way under some tree, they could reach the thana next morning at about 8.30 a.m., when on the statement of P. W. 1, a first information report (Exhibit 5) was drawn up by the Police Sub-Inspector Rajendra Prasad (P. W. 19). "

4. The Sub-Inspector (P. W. 19) taking along with him a doctor, R. M. P. Jamuar (P. W. 9) reached the place of occurrence at 11-20 a.m. the same day. Doman and Ram Murmu (P. W. 10), who were lying injured, were given first aid by the doctor (P. W. 9). P. W. 19 held inquest over the dead body of Mangal and prepared an inquest report (Exhibit 3/2) in presence of some witnesses. He prepared a sketch map with explanatory notes (Exhibit 6) of the place of occurrence. Doman also expired at about noon. P. W. 19 held inquest over his dead body also and prepared an inquest report (Exhibit 3/3). The two dead bodies were despatched for post mortem examination to Godda Hospital. Autopsy over each was performed by Dr. M. P. Varma between, 3.30 and 4 P.M. on the 29th July, 1960. The evidence of this doctor as recorded by the

committing Magistrate was tendered at the trial u/s 509 of the Code of Criminal Procedure.

5. The Sub-Inspector (P. W. 19) had also found injuries on the persons of Ram Murmu (P. W. 10) and Jastni Murmy (P. W. 3) and had prepared their injury reports. Their injuries were subsequently examined by another medical officer named Dr. J. B. Chakravarty of Mahagama Dispensary whose evidence as recorded by the committing Magistrate was also tendered u/s 509 of the Code of Criminal Procedure. The Sub-Inspector, (P. W. 19) after recording the first information report of P. W. 1, had examined Munsu Marandi (P. W. 12), Suphal Hansda (P. W. 13) and Choukidar Bauna Ghatwal (P. W. 15) who had accompanied P. W. 1 at the police station, and, at the time of his visit to the place of occurrence, had examined Bongi Murmu (P. W. 2), Jasmi Murmu (P. W. 3), Ram Murmu (P. W. 10), Sawrena Soren (P. W. 14) and Bhola Tudu (P. W. 16), and on the following day, i.e., on 29th July, 1960, Fagu Hembrom (P. W. 61) and Saukhi Hembrom (P. W. 8). Since P. W. 19 was under orders of transfer, he made over charge of the case to his assistant, A. S. I. Chandra Shekhar Prasad (P. W. 18) on the 6th of August, 1960, and when P. W. 19 was succeeded by Sub-Inspector Uma Shankar Pd. Singh (P. W. 20), the latter took charge of the case on the 18th November, 1960, and, after completing investigation in the case, he submitted charge-sheet on the 16th January, 1961.

6. The appellants, in due course, were committed to the Court of Session after an enquiry by a Magistrate. The appellants pleaded not guilty to the charges, their defence being one of denial of their participation in the crime.

7. The prosecution, in support of its case, examined some 20 witnesses, out of whom some were formal witnesses, some were tendered, and some were connected with the investigation of the case. The witnesses who deposed as eye witnesses were Maidi Tudu (P. W. 1), Bongi Murmu (P. W. 2), Jasmi Murmu (P. W. 3), Saukhi Hembrom (P. W. 8), Ram Murmu (P. W. 10) and Sawrena Soren (P. W. 14), and some deposed as corroborative witnesses, and among them were Supiai Hansda (P. W. 13), Bauna Chatwal (P. W. 15) and Bhola Tudu (P. W. 16). The learned Sessions Judge did not accept the evidence of P. Ws. 3, 8 and 14 as eye witnesses to the occurrence relating to the assaults by the appellants on the three assailed but he accepted their evidence regarding their having seen the appellant running away with lathis soon after the occurrence. As eye witnesses, he accepted, in full, only the evidence of P. Ws. 2 and 10. He has accordingly convicted the appellants in the manner aforesaid. The appellants have since filed this appeal from Jail.

8. The appellants were represented before us by the learned Counsel, Sri Janki Prasad Singh, who assisted us as *amicus curiae* and we are thankful to him for it.

9. The evidence of the three eye witnesses, P. Ws. 1, 2 and 10 relating to the various assaults on Mangal, Doman and Ram by the two appellants in the manner as alleged finds adequate corroboration from the evidence of the Sub-

Inspector (P. W. 19), so far as the place of the actual assault is concerned. He had found Doman lying injured on a cot in the closed verandah of his south-facing room, Ram lying injured on a cot in his west-facing room and Mangal lying dead on a cot in the Gohal" situate west of the south-facing room. While he had found no blood-mark in the courtyard or under the cot of Doman, he had. found blood below the cot of Ram as also below the cot of Mangal, as also on the main entrance lane which lay by the side of the Gohal of appellant Prithwi, who, as the evidence discloses, lived jointly with his nephew, appellant Mangal. Although P. W. 19 had noticed no blood mark in the courtyard, he had noticed some spots appearing to have been licked by animals. P. W. 19 scraped some blood-stained earths from three places where blood spots had been found and seized them under seizure lists (Exhibits 4/3 to 4/5). These blood-stained earths were later, on a test by the Chemical Examiner and the Serologist as their reports (Exhibits 9 and 9/1) would show, found to have contained human blood. The absence of blood below the cot of Doman must be explained on the hypothesis that blood must have dried down by the time he had been removed to a cot. It was not taken in the evidence either by the prosecution or by the defence as to how the three injured persons, who had fallen on the ground, came to be put on different cots. But it is obvious that after they had fallen down as a result of the injuries inflicted on them, they must have been put on their respective cots. The south side of the house of the deceased is open, and it is not surprising that some animal like dog must have licked up the blood that had fallen in the courtyard. The presence of the three injured persons with one already dead at different places in their own house and with marks of human blood at three places do support the prosecution story that the assaults were committed on them in the courtyard. As a matter of fact, there was no suggestion on behalf of the defence that those injured persons had been assaulted anywhere else. I. am, therefore, satisfied beyond all manner of doubt that the occurrence took place in the courtyard of the deceased and at the time and in the manner alleged.

10. The next question for decision is, whether the assailants were the two appellants. On this point, the evidence of Ram Murmu (P. W. 10) is most important, inasmuch as he had also received injuries, a fact which has been testified also by the medical officer, Dr. J. B. Chakravarty who had, at about 6 P.M. on the 28th July, 1960, the day following the occurrence, found two lacerated-wounds -The one on the left parietal eminence and the other on the right parietal eminence - and a swelling on the palm, all caused by a hard blunt substance like lathi within about 36 hours of the examination. The nature of the injuries and their age confirm the evidence of P. W. 10 as also of the other two eye-witnesses, P. Ws. 1 and 2. P W. 10 claims to have seen the assaults by the two appellants on Mangal and Doman from the very beginning, though, in this respect, his evidence before the committing magistrate as also before the Police Officer (P. W. 19) was a little different, the latter being that he had not seen the beginning of the assault by Prithwi on Mangal. His claim before the committing magistrate was that it was when he had heard of "Dhain DhahY sounds of lathis

in; the Angan that he had come out, and so was his statement before the investigating officer (P. W. 9) with a further positive statement that he had not seen the first assault by Prithwi on Mangal by throwing of lathi. But his evidence has, otherwise been consistent that when he had come out in the Angan, he had seen with his own eyes the two appellants still assaulting the two deceased and it was at that stage when he had intervened that he had also been assaulted by both the appellants with their lathis. Since his evidence in this regard is by no means inconsistent, I do not find it possible to disbelieve his story, remembering the fact that he had himself been injured during the course of the commission of the crime. There can, therefore, be no doubt about the presence of this witness at the time of the occurrence. The only other criticism that can be made against his evidence is, as admitted by him in his evidence before the committing Magistrate, though not at the trial, that appellant Prithwi had, prior to the occurrence, brought a criminal case against him besides another. But this is no ground for disbelieving his evidence. He is a common relation of i the appellants as also of the deceased in the same degree and I do not think that merely because i a criminal case had been brought by appellant Prithwi against him, he would falsely impute this serious crime to Prithwi and his nephew.

11. Apart from the evidence of P. W. 10, there is then the evidence of Maidi Tudu (P. W. 1) and Bongi Murmu (P. W. 2), who claim to have seen the entire incident beginning from the paddy field and culminating in their courtyard. There is absolutely no reason to disbelieve their evidence merely because they are wife and daughter respectively of one of the deceased Doman, and mother and sister of deceased Mangal. They are close Telationfe of the appellants as well, and if the assailants were other than these appellants, they would hot foist a case on them, leaving out the real assailants. There can be no doubt that the two deceased and Ram Murmu (P. W. 10) had all been injured at about 3 P.M. on the date of the occurrence as all those who had arrived at the scene of the occurrence have testified that they had seen the three injured persons in the courtyard and had been informed by the three eye witnesses that the two appellants were their assailants. These witnesses are Jasmi Murmu (P. W. 3), Saukhi Hembrom (P. W. 8) and Sawrena Soren (P. W. 14) and they have amply corroborated the story of the three eye-witnesses.

12. It would appear that Jasmi Murmu (P. W. 3) in her statement before the investigating officer (P. W. 19) had stated that P. Ws. 1 and 2 had arrived at the time Doman was being dragged and Ram and Mangal were lying injured and on the basis of this statement, it is suggested that P. Ws. 1 and 2 must have arrived after the assaults were over, and, therefore, they could not have seen the acts of assaults. But P. Ws. 1 and 2 cannot be contradicted with reference to the statement of P. W. 3 made to the police officer. Besides P. W. 3, according to her own evidence given in Court, admitted that she had reached when the injured were lying. It is just possible that she could not have noticed or marked the time when P. W's. 1 and 2 had arrived. They were, according to their own story, following the appellants from the paddy field, and the appellants, in their turn,

were following the two deceased. Thus, they were in a position to have seen the whole of the incident.

13. Sri Janki Prasad Singh has next contended that the investigating officer (P. W. 19) did not appear to have verified the prosecution story about the ploughing of the field for paddy transplantation, as claimed by P. Ws. 1, 2 and 16, by visiting the spot. P. W. 2 has also said that she did not point out that spot to the police officer. But that was none of her fault, if the police officer did not think it worth-while to have? inspected the paddy field as well. The police officer should have verified by making inspection of that place, but any omission on his part in this regard is not sufficient to cast any doubt on the genesis of the occurrence. Bhola Tudu (P. W. 16) who is an altogether unconcerned person, has supported the story of P. Ws. 1 and 2 saying that he was also ploughing his field about 35 yards away and had seen the two appellants altercating with the two deceased on their ploughing the field. The only discrepancy between his evidence and that of P. Ws. 1 and 2 is regarding the time of this altercation. According to P. W. 16, the time was at about noon and the time of stopping of ploughing by the two deceased was about 2 P.M.... The further discrepancy between his evidence and that of P. Ws. 1 and 2 is that according to P. W. 16, the deceased had stopped ploughing of their own accord at about 2 P.M., whereas according to P. Ws. 1 and 2, the deceased had unyoked the bullocks and left the field, carrying their respective ploughs on their shoulders and driving away the bullocks after the altercation, intimidated by the threat held out by the two appellants. These inconsistencies are by no means material, remembering the fact that they are simple. Santhals, have little idea of time and capacity to remember minor details.

14. As a matter of fact, the story of ploughing is not of any consequence. It is only relevant as an immediate motive for the crime. It is, therefore, immaterial how and wherefrom the appellants came to the house of the two deceased, following them from behind as long as the story of assaults is found to be true, as it is definitely so, borne out by the evidence referred to above.

15. The nature of the assaults on the two deceased, Doman and Mangal at about the time alleged by the prosecution is further borne out by the evidence of the medical officer, Dr. M. P. Varma, who had performed autopsies on their dead bodies on the 29th July, 1960. Dr. Varma performed the autopsy on the dead body of Doman .at 3.30 p.m. and had found eight injuries like lacerated wounds, contusions, ecchymosis, abrasions on different parts of the body including fracture of the right fifth, sixth, seventh and eighth ribs on the posterior axillary line. The injuries were all ante-mortem and death was due to their cumulative effect, being sufficient in the ordinary course of nature to have caused death. The injuries appeared to have been caused by hard and blunt substance like lathi and their age was within two to three days of the autopsy.

16. The same doctor had performed autopsy at 4 p.m. on the same date over the dead body of Mangal. On his dead body he had found injuries of practically similar nature, some even more serious, seven in number, all caused by hard and

blunt substance like lathi within two to three days of the post-mortem examination. Injury No. 1 was a big contusion on the left temporal region with depressed fracture of the left parietal bone with meningeal membrane and the underlying brain matter lacerated, and this injury in itself was sufficient to cause death in the ordinary course of nature, though death was due to the effects of the other injuries as well.

17. The number and nature of the injuries would further show that though lathis alone were the weapons used, the assailants had clearly intended to cause death of the victims. Now, as the evidence has shown, the assailants being only the two appellants, they were both guilty of having committed double murder. Since, however, the two appellants were acting conjointly, inflicting various blows on the two deceased, it is not possible to ascribe to any one of them the fatal blows, so as to charge each one of them separately with the murder of the two deceased. But from their conduct in acting conjointly, it is clear that they were acting in furtherance of their common intention to kill the two deceased.

18. Section 34 of the Indian Penal Code provides that, "When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone." In order to find out the common intention, the acts should be done in pursuance of a prearranged plan or a pre-arranged concert, which may develop even on the spot during the course of the commission of the offence. In this case there can be little doubt of a pre-arranged plan between the two appellants to bring about the death of the two deceased. The two appellants had, at first, altercation with the two deceased in the paddy field, and when they left the field out of fear and went home driving away their bullocks and carrying away their ploughs, they were followed there by the two appellants who had carried a lathi each and at that place, both the deceased were beaten mercilessly by both the appellants, practically to death, since Mangal died on the same evening and Doman, only the next day at about noon. It is crystal clear that both the appellants had shared the common intention to cause death of the two deceased. They are, therefore, both guilty of the offence of double murder read with Section 34 of the Indian Penal Code.

19. It is true that the learned Judge did not charge the two appellants with constructive liability for murder with the aid of Section 34 of the Code, but for this omission, in the charge no prejudice was caused to them, when the evidence disclosed such an offence. The absence of any charge u/s 34 of the Indian Penal Code is of no material consequence in the circumstance of the case. I would, therefore, find both the appellants guilty u/s 302 read with Section 34 of the Indian Penal Code. The conviction of the appellants u/s 323 of the Indian Penal Code for causing hurt to Ram Murmu (P. W. 10) is also sustained.

20. In the matter of the sentence I should think, the learned Judge was not quite right in awarding them only life sentence, simply for the reason that the appellants are aborigines belonging to a backward tribe, and should not be

judged with the same standard as people of advanced society, although in the opinion of the learned Judge, it was a case deserving of extreme penalty of, death. Such an impression seems to have gained ground, obviously on the basis of a bench decision in Emperor Vs. Remis Christian, . I am afraid, this decision is not unoften not read in its own context. The accused, in that case, was an aboriginal, aged about 21 years, and was convicted for murder of his wife on the basis of some circumstantial evidence alone. It was not known whether there was any cause for provocation preceding the murder, and Meredith, J., who delivered the judgment, and with whom Benett, J. agreed, observed as follows:

The appellant is a young man, little more than a boy. The learned Judge gives his age as 21. He is an aboriginal and such people cannot be judged entirely by the standards which are applicable to more civilized races. Such people are liable to sudden accessions of rage, when they are not perhaps entirely responsible for their actions. Apart from that, there is a hiatus in the case. We do not know what the reason was for the murder. We cannot be sure that there was not grave provocation. In these circumstances, I am of opinion, that it would not be proper to impose a death sentence....

It is clear that the observation was not meant for a universal application in every case where an aboriginal is found guilty of murder; otherwise, it would be giving a licence to every aboriginal to commit murder with impunity in the matter of death sentence. The sentence must primarily depend upon the gravity of the offence. It is only when there is some extenuating circumstance that can be taken into consideration for the mitigation of the sentence. An undeveloped mind of an accused belonging to a backward tribe with its general trait of an easy sensitiveness to rage on mere trifles may be an extenuating circumstance to be reckoned with, but is not by itself sufficient to minimise the sentence. It has to be taken into account in conjunction with some other circumstance like provocation, further immaturity of understanding due to tender age or abnormality of mind and the like. But when there is absence of any other cause in the nature of extenuating circumstance, or when the provocation is self-sought, the mere backwardness of an accused is in itself no plea to the severity of the sentence. Under the amended provision, death sentence for murder is no doubt optional and the Judge is no longer bound to give reasons for awarding the lesser sentence; the sentence nevertheless must have to be appropriate, commensurate with the gravity of the offence, and when reason is assigned for giving lesser sentence, it must be cogent. The present case is one of extreme brutality without any cause for excuse. The two murders were committed in a most cruel manner without the slightest provocation. The two accused had left the ploughing on the objection of the appellant and I they retreated home where they were "followed and beaten to death. Something could be said in favour of appellant Mangal, because of his age being only 21 years, but appellants Prithwi could well deserve the maximum penalty of death. ; Since, however, there was no rule for enhancement and I would not consider it necessary to issue this rule at this stage, the sentence of life imprisonment with regard to both of them is

confirmed. The appeal is dismissed.

G.N. Prasad, J.

21. I agree.