

**(2006) 03 JH CK 0082**

**In the Jharkhand High Court**

**Case No : Criminal Appeal No. 48 of 1990P**

Sabodi Hansda, Jitan Hansda, Phulin Murmu and Balai alias  
Kisto Hansda

**APPELLANT**

**Vs**

The State of Bihar (now Jharkhand)

**RESPONDENT**

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**Date of Decision : 21-03-2006**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313  
Penal Code, 1860 (IPC) — Section 302, 34

**Citation : (2006) 03 JH CK 0082**

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

**Bench : Division Bench**

**Advocate : Binod Singh, Amicus Curaie, for the Appellant; Shekhar Sinha, APP, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

1. The appellants, four in number, were arrayed as A-1, A-2, A-4 and A-3 respectively along with Surendra Murmu, who was arrayed as A-5, before the 3rd Additional Sessions Judge, Dumka. They were tried for the charge u/s 302/34 of the Indian Penal Code, on the allegation that in furtherance of the common intention of each other, they caused the death of Surajmuni Baskey @ Sarojni Baskey on the midnight of 15.10.1987. The trial judge, while acquitting Surendra Murmu, the 5th accused in the Sessions case, found the appellants alone guilty, as charged, and sentenced each one of them to imprisonment for life. The appellants, aggrieved by the said judgment and order of conviction and sentence, have preferred the above appeal.

2. The appellants and the other acquitted Surendra Murmu will be referred A-1 to A-5 in the order, they were arrayed before the Sessions Judge.

3. The facts, necessary to dispose of the appeal, can be briefly summarized as follows:

The 1st accused Subodi Hansda" is the 2nd wife of the 5th accused. The 2nd accused Jitan Hansda is the father of the 1st accused. A-4, Phulin Murmu is the mother of the 1st accused and A-3, Kisto Hansda, is the brother of the 1st accused. The case of the prosecution is that Surajmuni Baski, the first wife of Surendra Murmu, was ill treated after the second marriage of A-5. According to the prosecution, in order to get rid of Surajmuni Baski, who was the first wife of the 5th accused, the appellants and A-5 committed the murder of Surajmuni Baski on 15.10.1987 . In the morning on 16.10.1987, the 1st accused informed PW-6, who is the wife of PW-5, that Surajmuni Baski is lying and inspite of awakening her up, she is not getting up. PW-6 went to the house and after examination found her dead. The villagers gathered and a complaint (Fardbeyan), Ext.2, was given by PW-1 Munshi Kisku to PW-13, Balmiki Kunwar, Officer-in-charge of Dumka Muffasil police station. A crime was registered and investigation was taken up.

4. After the taking of investigation, inquest was conducted and thereafter the body was sent for autopsy with a request to the doctor.

5. On receipt of the requisition, PW-15, Dr. Laxmi Narayan Mandal, conducted autopsy on the dead body of Surajmuni Baski and he found the following injuries:

(i) Bruise 1 1/2" x 1" over elbow;

(ii) Bruise 2" x 2" over right upper abdomen.

On dissection of skull- Nothing was found abnormal.

On dissection of chest- There were fracture of left 4th, 5th & 6th ribs with laceration of connecting pleura and lungs. Huge quantity of blood present in chest cavity.

On dissection of abdomen- Liver found ruptured . A huge quantity of blood collection found on abdominal cavity" The doctor issued Ext.5, the post mortem certificate, with his opinion that the deceased could have died on account of shock and haemorrhage, as a result of injuries, and they are sufficient in ordinary course of nature to cause death. According to him, death could have occurred 72 hours prior to autopsy.

6. After the completion of investigation, the final report was filed against the appellants and the 5th accused, who was acquitted.

7. When the appellants were examined u/s 313 of the Code of Criminal Procedure on the incriminating circumstances, appearing against them, they denied all the incriminating circumstances. They did not examine any witness on their side.

8. The learned counsel appearing for the appellants submits that the prosecution having relied upon the sole eye witness, PW-7, Birbal Singh, the trial judge ought to have acquitted the appellants, when his evidence, on the face of it, shows that it is artificial in nature and more so, when the trial court having acquitted the 5th

accused on the same evidence.

9. We have heard Mr. Shekhar Sinha, learned A.P.P. on the above contention.

10. The cause of death of Surajmuni Baski stands established through the evidence of PW-15, Dr. Laxmi Narayan Mandal, who issued post mortem certificate, Ext.5. We, on the legal evidence, hold that Surajmuni Baski died on account of homicidal violence.

11. The prosecution before the trial court has examined PW-7 as an eye witness to the occurrence. He was the servant of A-5, who was acquitted by the trial judge. According to him, on the midnight of 15.10.1987, A-2, A-3 & A-4 reached the house of A-1 and remained therein. According to him, Surajmuni Baski, the deceased, was sleeping inside the house and that at midnight, the 1st accused pressed the neck of Surajmuni with a lathi by sitting over her chest after her hands and feet were tied. He has further deposed that the father, mother and brother of the 1st accused, A-2, A-3 and A-4, helped the 1st accused to commit the murder by catching hold of deceased. He has further deposed that he had protested but he was asked to keep quite.

12. Now, the Court is to consider whether the evidence of PW-7 can be accepted for upholding the judgment of conviction and order of sentence imposed upon the appellants. Even at the outset, we may say that the evidence of PW-7 does not inspire any confidence in the mind of this Court. According to the prosecution, the occurrence took place on the midnight of 15.10.1987. The statement of PW-7 u/s 161 Cr.P.C. was recorded on 7.11.1987. According to PW-7, he did not inform the police officials when they reached the scene of occurrence, after the complaint was lodged, as he was afraid to give any statement against the accused. Though, he has stated that he was afraid to give his statement to the police after the occurrence, he claimed in his evidence that 2-3 days after the occurrence, he informed the said fact to Village Pradhan as well as the Village Mukhiya, who in turn, asked him to go to the Police Station to give the statement. He has stated that he informed the police within 2-3 days of the occurrence. If PW-7 actually informed about his seeing attack on the deceased by the appellants and informed the Village Pradhan and Village Mukhiya after 2-3 days and that he also informed the police officials immediately thereafter, then his statement ought to have been recorded within three days of the occurrence; but we find that the statement was actually recorded on 7.11.1987 i.e. after 21 days. The explanation offered by the prosecution regarding the delay in recording of the statement of PW-7 is highly artificial, since if PW-7 was really afraid to give his statement, then he could not have implicated the accused by informing the Village Pradhan and Mukhiya after the incident.

13. We, therefore, do not place any reliance upon the evidence of PW-7. Once, we reject the evidence of PW-7 then there is absolutely no legal evidence to connect the accused with the crime. It is no doubt true that the dead body of

Surajmuni Baski was found in the house of the 5th accused, who was not present in the village on that date. There is no definite evidence as to who caused the death of deceased Surajmuni as four persons have been arrayed as accused. We, therefore, find no legal evidence connecting the appellants with the crime and, therefore, set aside the conviction and sentence, imposed upon them by the trial court.

14. The appeal is allowed. The appellants are acquitted. It is reported that the appellants are on bail. They are discharged from the liabilities of their bail bonds.