
(2009) 04 JH CK 0007
In the Jharkhand High Court

Saheb Ram Hansda @ Sabe Ram Hansda	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 04 JH CK 0007

Hon'ble Judges : Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The sole appellant Saheb Ram Hansda @ Sabe Ram Hansda having been convicted u/s 302 of the Indian Penal Code for committing murder of Meghrai Hansda and Bhelu Hansda has been sentenced to imprisonment for life.

2. The case of the prosecution is that on 5.12.1988 at about 8-9 O'clock in the morning, when some verbal altercation took place on account of land dispute in between Meghrai Hansda and his son Bhelu Hansda on one hand and this appellant and Sipahi Hansda, another accused (since absconded) on the other hand, both the deceased, Meghrai Hansda and Bhelu Hansda came to the backyard of the house of Sipahi Hansda where this appellant and Sipahi Hansda, who were having Tangi and Lathi respectively with them, started assaulting them, as a result of which Meghrai Hansda died at the spot whereas Bhelu Hansda sustained severe injuries on his head as a result of which he was removed to hospital for the treatment.

3. Meanwhile, the police on getting information came at the village - Karudih and recorded the Fardbeyan (Ext.1) of the informant Maku Baski (P.W.14) upon which, case was registered against this appellant and Sipahi Hansda and the matter was taken up for investigation.

4. The Investigating Officer (not examined) having found Meghrai Hansda dead sent the dead body for autopsy which was done by Dr. Ajay Kumar Jha (P.W.12)

who found the following injuries.

(i) Lacerated wound 3" x 1" x 1/2" on left temporal region of the scalp, transversely placed.

(ii) Bruise 3" x 2" on the left side of chest over a swelling.

(iii) Multiple small bruises and abrasions over back and shoulders.

5. On internal examination, Doctor found laceration over the lung and fracture of the sixth rib of the left side. Accordingly, Doctor issued post mortem examination report (Ext.2/1) with an opinion that death occurred due to shock and haemorrhage, as a result of aforesaid injuries caused by hard blunt substance. Subsequently, the injured Bhelu Hansda died in course of treatment at the hospital on 17.12.1988. Investigating Officer after holding inquest on the dead body of Bhelu Hansda prepared inquest report (Ext.3) and sent the dead body for post mortem examination which was done by Dr. Bljay Kumar Bhagat (P.W.9) on 18.12.1988 who found the following injuries on his person.

(i) Four stitched wounds on the right parietal part of the skull mid way in the front.

(ii) Three stitched wounds on the right parietal part of the skull above temporal area.

(iii) One stitched wound behind the left ear.

(iv) One stitched wound above the left eye brow.

(v) Three bruises 6" x 1/2", 1 1/2" x 1/2", 2 1/2" x 1/2" on the left chest near axillae.

(vi) Bruise 3" In diameter on the upper part of this left thigh on lateral aspect.

(vii) Bruise 1/2" x 1/2" over left interior superior iliac spine.

(viii) Bruise 3 1/2" x 1/2" over the left arm in the mid way.

6. According to Doctor, death occurred due to shock and internal haemorrhage, as a result of the aforesaid injuries caused by hard blunt substance. Accordingly, he issued post mortem examination report (Ext.2).

7. After completion of investigation, police submitted charge sheet against this appellant as well as Sipahi Hansda, who subsequently escaped from jail. Whereupon cognizance of the offence was taken and in due course when the case was committed to the court of sessions, charge was framed against the appellant to which the accused pleaded not guilty and claimed to be tried.

8. The prosecution in this case has examined as many as 14 witnesses. Of them, P.W.1 to P.W.8 did not support the case of the prosecution. However, P.W.11, Hemlal Hansda, P.W.13 Tala Mai Murmu (wife of the deceased Bhelu Hansda) and the informant P.W.14 Maku Baskey (wife of Hemlal Hansda) did come forward to

testify that they saw this appellant and Sipahi Hansda assaulting the deceased Meghrai Hansda and Bhelu Hansda by tangi and lathi.

9. However, the trial court did not find P.W.13 Tala Mai Murmu to be a trustworthy witness but found P.W.11 Hemlal Hansda and (P.W.14 Maku Baski to be the trustworthy and hence, recorded the order of conviction and sentence as aforesaid.

10. Being aggrieved with the judgment of conviction and order of sentence, the appellant has preferred this jail appeal in which Mr. Binod Singh, learned Counsel was appointed as Amicus Curiae to assist the Court in this case.

11. Learned Counsel appearing for the appellant submits that though P.W.11 Hemlal Hansda and P.M.14 Maku Baskey have claimed in their examination-in-chief as eye witnesses but from the testimonies elicited during cross-examination, their claim of being eye witnesses gets falsified and as such, the trial court should not have placed its implicit reliance on the testimonies of these two witnesses.

12. Learned Counsel appearing for the appellant further submits that testimonies of the witnesses do not get corroboration from the medical evidence and this fact also lends support to the fact that they had had no occasion to see the occurrence.

13. Heard learned Counsel appearing for the State.

14. Having heard learned Counsel appearing for the parties and on perusal of the record, we do find that P.W.11 Hemlal Hansda son of Meghrai Hansda, has testified that on the date of occurrence at about 8-9 O'clock in the morning, this appellant who was having tangi in his hand and the other accused Sipahi Hansda having lathi with him assaulted his father Meghrai Hansad and his younger brother Bhelu Hansda in the backyard of the house of the accused Sipahi Hansda, as a result of which Meghrai Hansda died at the spot whereas Bhelu Hansda died at the hospital after some days. Similarly, P.W.14 Maku Baskey has also testified that when she came at 10 O'clock in the morning after harvesting paddy crop, she saw altercation going on In between the accused and the deceased and in that course, this appellant assaulted Meghrai Hansda and Bhelu Hansda with tangi whereas other accused Sipahi, Hansda assaulted them with lathi.

15. On careful perusal of their evidences, none of them appears to be the eye witnesses, as P.W.11 Hemlal Hansda in his cross-examination has testified that when he came at the place of occurrence, he found his father Meghrai Hansda lying on the ground as dead whereas his brother Bhelu Hansda was lying on the ground unconsciously. Similar is the testimony of P.W.14 Maku Baskey where she says that when she came at the place of occurrence, she found both the deceased lying on the ground and thereafter her husband Hemlal Hansda (P.W.11) reached at the spot. She has further testified that she had not seen the

accused persons assaulting the deceased. In this situation, testimonies of these two witnesses (P.Ws. 11 and 14) never inspire confidence to be believed. That apart, testimonies of these witnesses do not find corroboration from the medical evidence as both of them have testified that both the accused persons assaulted the deceased with tangi and lathi whereas Doctor who held autopsy on the dead bodies did not find any injuries on the persons of the deceased which had been caused by sharp cutting weapon. Thus, the medical evidences are also suggestive of the fact that P.W.11 Hemlal Hansda and P.W.14 Maku Baski had not seen the occurrence. In this view of the matter, no reliance can be placed on the testimonies of P.W.11 and P.W.14.

16. Thus, the trial court has certainly erred in recording the order of conviction and sentence. Accordingly, it is set aside and the appellant is acquitted and is discharged from the liability of the bail bond.

17. In the result, this appeal is allowed.