
(1995) 11 PAT CK 0034
In the Patna High Court
Case No : Cr. Appeal No. 578 of 1994

Srijal Hembram and Lengra Hansda

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0034

Final Decision : Dismissed

Judgement

Loknath Prasad, J.—This appeal is directed against the order of conviction and sentence recorded by the 3rd Additional Sessions Judge, Dumka vide his judgment and order dated 20.9.1994 passed in Sessions Case No. 234/92 and 192/92, through which he convicted and sentenced both the Appellants to undergo imprisonment for life u/s 302/34 of the Indian Penal Code and further both the Appellants were also sentenced to undergo rigorous imprisonment for seven years u/s 201/34 of the Indian Penal Code and it was further ordered that both the sentences shall run concurrently.

2. That the fact in short giving rise to this appeal is that a bullock belonging to the Appellant Lengra Hansda was suffering from some trouble annul as such died and on 15.3.1992 in the morning this Appellant Lengra Hansda came to the house of the informant and asked the informant and her husband Musai Murmu that they were witch (Dian) and they were responsible for the illness and death of his bullock for that a Panchayati in the village would be held today in the night and they must come for the Panchayati to which the husband of the informant expressed his inability for the reasons that he had no money to pay the fine to be imposed by the Panchayat and after harvesting of the paddy he is prepared to attend the Panchayati in this regard but this Appellant threatened of dire consequences if they failed to attend the Panchayati in the same night. It is also the prosecution case that in the same night at about 10.00 P.M. or so these two Appellants along with Poresh Murmu and Ruplal Hembram came to their house situate in village Sheulibana within Raneshwar Police Station, District Dumka and

the Appellant Lengra Hansda forcibly opened the door. Then the informant and her husband got up and enquired about the matter and came out from the house and then the informant had seen the Appellant Lengra and Poresh Murmu were armed with lathi and the other Appellant Srijal Hembram was armed with Tangi and the informant identified them in the moonlit night.

3. It has also been alleged by the informant that all the accused persons in furtherance of their common intention had thrown the husband of the informant that the ground and they assaulted him by the weapons they were holding and so the informant began to weep and requested them not to assault her husband but due to assault, her husband died there and all the accused persons took the dead body from that place towards southern side. After that the informant out of fear left the village and went to the house of one Mukim Khan of village Saka Kandar and narrated the entire incident and remained there in the night and on the next morning she had gone to the house of her own brother Gando Soren in village Kalaibari and narrated the incident and in the morning at about 8.00 A.M. both of them came to the place of occurrence and searched the dead body of the deceased which could not be traced. The informant and her brother Gando then had gone to the Police Station and lodged the F.I.R. about this occurrence on 16.3.1992 at about 1.00 P.M. or so.

4. On the basis of the F.I.R. lodged by the informant this case was instituted as against these two Appellants and Poresh Murmu and Ruplal Hembram. The dead body of the deceased could be recovered at a distance from the P.O. village and the inquest was prepared and after that it was sent for post-mortem. The Investigating Officer also seized blood stained earth from the P.O. and also from the place from where the dead body had been recovered and the weapon used by the accused persons. After investigation, the police submitted charge sheet as against four accused named above and also against Shibu Hembram, who had not been named in the F.I.R. showing the named accused Ruplal Hembram as absconder because he could not be apprehended.

5. These two Appellants and Poresh Murmu and Shibu Hembram faced their trial in the Court below and they claimed themselves innocent and denied to have committed the murder of the deceased i.e. the husband of the informant as alleged and their only defence was that they have been falsely implicated and no specific defence version was set up in the Court below. The trial Court convicted these two Appellants and sentenced them in the manner indicated above u/s 302/34 I.P.C. and also u/s 201/34 I.P.C. and the accused Poresh Murmu and Shibu Hembram were acquitted of the charges leveled against them.

6. In the trial Court, the prosecution could examine as many as eight witnesses to prove the case as against the accused persons and out of them, P.W. 1 Sukhi Soren is the most important witness, who is the wife of the deceased and solitary witness on the point of occurrence and P.W. 3 is Bando Soren, the brother of the informant, who is hear say witness. P.W. 4 Surja Kisku is the seizure list witness. The P.W. 2 Mukim Sheikh. P.W.5 Prameshwar Hembram, P.W.6 Sanadhan Murmu

had not supported the prosecution case and so they were declared hostile by the prosecution. P.W. 7 is Dr. Shushi Marandi, who held post-mortem over the dead body of the deceased on 17.3.1992, whereas P.W.8 Gopal Jee Prasad is the Investigating Officer.

7. According to the prosecution case, the murder of the deceased Musai Murmu, who was the husband of the informant i.e. P.W. 1 had taken place in the late hour of the night on 15.3.1992 in front of her house situate in village Sheolibana P.S. Raneshwar District Santhal Pargana. The factum of murder of the deceased and the defence has simply claimed that they have been falsely implicated in this case. Moreover, from the evidence of P.W. 1 Sukhi Soren and that of P.W. 3, who are witnesses of the inquest and also the evidence of P.W. 8 Gopal Jee Prasad, the then O.C. Raneshwar Police Station, this fact is well proved that the dead body of the deceased was recovered by the I.O. in presence of the aforesaid witnesses at village Chaulia on 16.3.1992 duly concealed in a bushy place and inquest i.e. Ext.-4 was prepared in presence of P.W. 3 and P.W. 4, P.W. 7 Dr. Shushi Marandi held Post-mortem examination on the dead body of the deceased on 17.3.1992 at 9.30 A.M. and he found as many as five injuries. Injury Nos. 1 and 2 were incised wounds on the forehead whereas injury No. 3 was also incised wound on the temporal region leading to fracture of the frontal bone and injury Nos. 4 and 5 were on the chest causing fracture of the ribs. According to the doctor, injury Nos. 1 to 3 were caused by sharp cutting weapon, may be Tangi whereas other two injuries were caused by hard and blunt substance i.e. lathi and injury Nos. 1 to 3 and 5 were sufficient to cause death in ordinary course of nature. So, this fact is well proved that the deceased was given several blows by Tangi and lathi in the late hour of night of 15.3.1992 in front of his house due to that he died and his dead body was concealed at a distance of 4 kms. in a village Chaulia and that had been recovered by the I.O. in presence of the witnesses.

8. Now the main question for consideration before us is if at all these accused persons in furtherance of their common intention committed murder of the deceased as alleged. On the point of occurrence, P.W. 1 Sukhi Soren, who is the wife of the deceased Kusai Murmu is the only witness and it is her evidence that in the late hour of night on the date of occurrence i.e. on 15.3.1992 when she along with her husband were sleeping inside the house, these two Appellants and Poresh and Ruplal came and they forcibly opened the door and brought them outside the house. In that process, she identified that Appellant Srijal Hembram was holding Tangi whereas Appellant Lengra Hansda and Ruplal, who is now absconding and has not faced the trial, were holding lathi and Poresh Murmu, who has been acquitted by the Court below was empty handed, and they began to assault her husband by the weapons they were holding and they were also telling that they were witch and responsible for causing the death of the bullock belonging to the Appellant Lengra Hansda. It is also her evidence that after that the accused persons took away the dead body to a distance and out of fear she had gone to the house of one Mukim Sheikh in village Saka Kandar and stayed

there for the whole night and in the morning she had gone to Kalai Bari, another village where her brother Bando Soren, figured as P.W. 3 was living and narrated the entire incident to him and then they came to P.O. and found the dead body missing and then they had gone to the police station and lodged the fardbeyan. The fardbeyan was lodged on 16.3.1992 at about 1.00 P.M. and admittedly the Police Station is at a distance of about 10 kms. and so there is no delay in lodging the F.I.R. This witness had consistently supported the prosecution case as mentioned in the F.I.R. because no contradiction was taken from the I.O., who has figured as P.W. 8. The evidence of this witness further indicate that in the morning of 15.3.1992 the Appellant Lengra Hansda came and asked them that they were witch and responsible for causing the death of his bullock due to witchcraft and so they should attend a panchayati, meaning thereby they had to compensate for the damages to which the deceased expressed inability and for that this occurrence took place.

9. This witness appears to be competent and reliable for the reason that admittedly the occurrence took place in the midnight or so and according to the I.O. her house is situate in the corner of the village and it is not expected that in the late hour of the night other witnesses may arrive there. Furthermore, there was no prior enmity and the cause of annoyance if any was with the Appellants because they suspected deceased to be a witch. So, though the (sic)ence of this witness is solitary on the (sic) of actual occurrence but it inspires (sic)idence for the reason mentioned above (sic)it is not expected from a tribal lady to (sic)incite the accused persons when admit(sic) there is no enmity.

10. The evidence of P.W.1 also finds (sic)oboration from the evidence of other (sic)esses including the evidence of the (sic) I.O. the prosecution case and the evidence P.W. 1 that immediately after the occur(sic) P.W. 1 out of fear had gone to the (sic)se of P.W. 2 Mukim Sheikh of another (sic)ge and narrated the incident and stayed (sic) for the whole night and on the next (sic)ning she had gone to the house of her (sic)her of another village, who has figured (sic)P.W. 3 and again narrated the entire inci(sic) to him. P.W. 2 Mukim Sheikh, who (sic)itted in his examination-in-chief that on relevant night P.W. 1 came to his house stayed there for the whole night but he denied that she had narrated the (sic)ils of the incident and had taken the (sic)es of the Appellant and other accused he assailants of her husband and so he been declared as hostile. Thus, it was (sic)tended on behalf of the Appellants that 2, the most important witness had not (sic)ported the prosecution case and thus, reliance can be placed on the evidence P.W. 1.

11. Now, it is settled principle of law if at all the prosecution declares any (sic)ess hostile, his evidence cannot be (sic)ted effaced or washed off the records (sic)gether, but the evidence can be ac(sic)ted to the extent their version is found to be dependable on a careful scrutiny (sic)eof. Similar view was expressed by the (sic) Court in a case reported in A.I.R 1853 S.C.. (Khujji Surendra Tiwary The State of Madhya Pradesh. In the (sic)ant case also it has come in evidence

(sic)P.W. 1 had gone to the house of P.W. 2 in the night. That fact has also been admitted by P.W. 2 which clearly indicate that some occurrence took place in that very night in the house of P.W. 1 and thus out of fear she left the village and had gone to another village i.e. the house of P.W. 2 for her safety and so though P.W. 2 had been declared hostile by the prosecution but that part of the statement that P.W. 1 came to his house in the night supports the prosecution case that some occurrence took place in the night of occurrence in the house or outside the house of P.W. 1.

12. The evidence of P.W. 1 also finds support from the evidence of P.W. 3 Bando Soren, who is own brother of P.W. 1 and from the evidence of P.W. 3 this much can be said that P.W. 1 came to his house on the next morning of the occurrence and narrated the entire incident and named the Appellants and so he had gone to the P.O. village and found the blood stained earth in front of the house and then the matter was reported to the police and the I.O. P.W. 8 came to the village on that very day and as pointed out by these two Appellants, the dead body was recovered with injuries at a distance of 4 kms. from the P.O. in village Chaulia and the inquest of the deceased was also prepared there. It is also the evidence of P.W. 3 and P.W. 4 that the I.O. seized blood stained earth in front of the house of the informant and also seized blood stained Tangi recovered from the house of the Appellant Srijal Hembram which had been used in the occurrence and as pointed out by both the Appellants the dead body had also been recovered at a distance of 4 kms. in village Chaulia duly concealed in a bushy place. P.W. 8 the I.O. had also stated that from the house of the accused Srijal Hembram blood stained Tangi had been recovered in presence of these witnesses and seizure list was prepared i.e. Ext.-5/1 and similarly he found blood stain in front of the house of the informant and seized some blood stained earth and all these articles were sent to the Director, Forensic Science Laboratory for examination and report. So, the evidence of the I.O. and these two witnesses also lead to the conclusion that the occurrence took place in front of the house of the informant as claimed by P.W. 1 and the dead body was taken away to a distance of 4 kms. and duly concealed so that the Appellants may screen themselves from the liability of punishment.

13. Learned Counsel for the Appellants submitted that admittedly the chemical examination report of the blood stained Tangi and blood stained earth had not been brought on the record and thus it cannot be said without any doubt that the Tangi in question was containing human blood. From the evidence of the I.O., this much is clear that all these articles were seized and blood stains were detected and were sent to the Director, Forensic Science Laboratory for chemical examination but unfortunately during trial report has not been received but on this score alone the prosecution case is not to be doubted in any way for the reason that the defence had not challenged the murder of the deceased and if the factum of murder itself is not challenged, then the determination if at all the articles seized by the I.O. containing blood stain is not very material when the seizure is well proved and not seriously challenged by the defence.

14. The other witnesses, namely, P.W. 5 Parmeshwar Hembram and P.W. 6 Sanadhan Murmu, who is village Pradhan had not supported the prosecution case and so they were declared hostile, and thus, it was contended that not a single witness of the village supported the prosecution case to show that the deceased was done to death only for the reason that the Appellants suspected him to be a witch and in such a situation it is thoroughly unsafe to rely upon the sole testimony of the wife of the deceased. There is no two opinion that P.W. 1 wife of the deceased is the most competent witness because the occurrence took place in the midnight or so, that too, in front of the house and she is expected to see the entire occurrence and her conduct also appears to be natural because she immediately rushed to another village for safety and in the morning she narrated the incident to her own brother P.W. 3, who is expected to help her and there was also recovery of the weapon Tangi used by one of the Appellants and also recovery of the dead body from a distance as pointed out by both the Appellants. So, these circumstance also corroborate the testimony of the solitary witness. Moreover, the order of conviction can be safely recorded even though the testimony is solitary if the Court finds that the witness is wholly reliable. In the instance case, the evidence of this tribal lady also appears to be wholly reliable and unblemish and the surrounding circumstances as discussed above lends support to her credibility.

15. Moreover, the trial Court has rightly observed that if any person is suspected to be a witch in the village, particularly in Tribal village, then the tribals got a superstition that he is responsible for causing the miseries and the entire villagers remain united as against the suspected witch concerned and that is strong reason that the other witnesses of the village had not supported the prosecution case in any way and they were declared hostile. The conduct of the informant also indicate that she was not expecting any help from the village for the reasons mentioned above and as such she immediately after the occurrence had rushed to another village and had taken shelter in the house of P.W. 2, who is also a non-tribal man.

16. Learned Counsel for the Appellants also submitted during the course of arguments that one of the accused Poresh Murmu had been acquitted by the trial Court though he had been named by the informant in the F.I.R. and the other accused Shibu Hembram had also been acquitted by the Court below and as such common intention failed and the prosecution has not been able to prove the common intention. In that view of the matter, on the basis of same evidence these two Appellants are not liable for conviction u/s 302/34 of the Indian Penal Code.

17. It is true that one of the accused Poresh Murmu has been acquitted by the trial Court for the reason that he was not holding any weapon so he was not sharing any common intention. Similarly the case of Shibu Hembram was quite on different footing because the informant had not named him in the F.I.R. and practically no evidence had come as against him but if some of the accused were

acquitted by the trial Court, on this score alone in appeal the other Appellants are not entitled for an order of acquittal because now it is a settled principle of law that the Court has to disengage the falsehood from the truth and in such circumstance, the Court has to analyze the evidence of the witnesses carefully and if the evidence is found to be consistent and reliable as against the Appellant, then the appellate Court can safely accept the same though some of the accused persons facing trial were acquitted by the trial Court and mere acquittal of some of the co-accused will not be a ground to show that the entire prosecution case is doubtful. Similar view was taken by the Supreme Court in the case reported in Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, and that of : AIR 1994 S.C. 2507.

18. So, on careful consideration of the entire evidence on the record and surrounding circumstances as discussed above, the prosecution has been able to prove beyond any reasonable doubt that both these Appellants were annoyed with the deceased because they suspected him to witch and responsible for causing the death of bullock belonging to Appellant Lengra Hansda by witchcraft and as such these Appellants and others came in the house of the deceased in the late hour of night of 15.3.1992 in furtherance of their common intention and forcibly brought the deceased outside the house and the Appellant Srijal Hembram, who was holding Tangi gave several Tangi blows whereas the other Appellant Lengra, who was holding Lathi, gave some lathi blows to the deceased with the intention to commit murder of the deceased and due to that the deceased died on the spot because he got several injuries on the vital part of the body. This fact is also well proved that the Appellants and others after committing the murder of the deceased, in order to screen themselves from the legal punishment, took the dead body of the deceased and concealed in a bushy place at a distance of 4 kms. from the place of occurrence i.e. in village Chaulia. In that view of the matter, the trial Court was perfectly justified in convicting and sentencing the Appellants to undergo imprisonment for life u/s 302/34 of the Indian Penal Code and further sentencing to undergo rigorous imprisonment for seven years u/s 201/34 of the Indian Penal Code and as the trial Court has already taken the reasonable view while awarding the sentence to the Appellants, it does not require any interference.

19. In the result, this appeal is dismissed and the conviction and sentence of both the Appellants, namely, Srijal Hembram and Lengra Hansda as awarded by the trial Court i.e. 3rd Additional Sessions Judge, Dumka in Sessions Case No. 234/92 and 192/92 is hereby confirmed and maintained. The bail bond of Appellant No. 2 Lengra Hembram, who is on bail, is hereby cancelled and the trial Court is directed to take steps for apprehension of this Appellant for undergoing the remaining part of imprisonment.

Onkar Narain Asthana, J.

20. I agree.