

Darbari Murmu and Ors Vs. State

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Court : Jharkhand

Decided On : Jan-31-2017

Appellant : Darbari Murmu and Ors

Respondent : State

Advocate for Pet/Ap. : Mr. Jitendra Shankar Singh

Judgement :

1 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) [Against the Judgment of conviction and sentence dated 31st Day of May, 1991 passed by the IInd Additional Sessions Judge, Dumka, S.P. in connection with Sessions Case No. 127 of 1983] Darbari Murmu, son of Babulal Murmu, Resident of - Ranya Masalia, P.S. Masalia, District - Dumka. Appellant [In Criminal Appeal (DB) No. 210 of 1991 (P) Chunka Murmu, son of Babulal Murmu, Resident of - Village - Nagrapathar, P.S. Masalia, District - Dumka (S.P.) Appellant [In Criminal Appeal (DB) No. 290 of 1991 (P) V e r s u s State of Bihar (Now Jharkhand) Respondent CORAM: HONBLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE DR. S. N. PATHAK For the Appellant : Mr. Jitendra Shankar Singh, Advocate. Mr. Randhir Kumar, Advocate. Mr. L.C.N. Sahadeo, Advocate. For the State : Mr. Amaresh Kumar, APP C.A.V. On 10/11/2016 PRONOUNCED ON 31/01/2017 Dr. S.N. Pathak, J. Earlier on 01.09.2016 when these appeals were taken up, the learned State counsel has verified the factum of death of Munshi Hembrom and Lobu Pujaher [appellant nos.

2 and 3 respectively in Criminal Appeal (D.B.) No. 210 of 1991 (P)] whereas appellant no. 1 Darbari Murmu is alive and the sole appellant in Criminal Appeal (D.B.) No. 290 of 1991 (P) is also alive. The instant appeal thus stands abated qua Munshi Hembrom and Lobu Pujaher [appellant nos. 2 and 3 respectively in Criminal Appeal (D.B.) No. 210 of 1991 (P)]. It has been also brought to our notice that one Kiran Khaira had also filed separate appeal being Criminal Appeal (DB) No. 248 of 1991 (P), which stood abated vide order dated 07.09.2009 on 2 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` account of his death. The records of the said appeal was tagged with these appeals. 2. Heard learned counsel for the appellants and learned counsel for the State. 3. Both the Criminal Appeals have been preferred against the Judgment of conviction and sentence dated 31st Day of May, 1991 passed by the IInd Additional Sessions Judge, Dumka, S.P. in connection with Sessions Case No. 127 of 1983 whereby appellants Chunka Murmu and Darbari Murmu have been held guilty and convicted for the offence under Sections 302/149 of the Indian Penal Code and sentenced to undergo imprisonment for life. Appellant Chunka Murmu has been further held guilty and convicted for the offence under Section 324, 323 and 148 of the Indian Penal Code and sentenced to R.I. for one year, six months and one year respectively. Appellant Darbari Murmu has been further held guilty for the offence under Section 147 of the Indian Penal Code and sentenced to undergo R.I. for six months. However, all the sentences so passed have been directed to run concurrently. 4. Case of the prosecution in short is that the land of J.S. No. 79 of village - Ranga belonged to the informant and his agnates including deceased Dahu Hansda and his brother deceased Bara Managal Hansda and that the paddy seedling in question were grown by them over the said field. On 25.07.1979, at about 8:30 a.m., when the informant went to his said field of J.B. No. 79, he found accused Darbari Murmu, Chunka Murmu, Bodi Tudu, Tulsi Hansda and Chhita Hansda uprooting the paddy seedling while the remaining accused persons named above, having been variously armed with arrows, lathi and Farsa and Gada were standing guard for helping those accused. Besides Dahu Hansda and Bara Mangal Hansda, other witnesses were working in their field and they assembled at 3 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` the field of J.B. No. 79 in order

to restrain the accused persons from committing any offence. In the meantime, the accused Munshi Hembrom came out from the side of the accused persons and on the pretext of bringing about peace, took the lathies from possession of the informant and his men and immediately Munshi Hembrom again went to the side of the accused and ordered them to assault the informant and his men. At once accused Chunka Murmu assaulted Dahu Hansda with Chhura while accused Labu Pujhar, Darbari Murmu and Tila Hansda and Chhita Hansda assaulted Dahu Hansda with lathi causing injuries on his head. Accused Kiran Khaira assaulted Bara Mangal Hansda with Lathi causing injuries on his head. Accused Chunka Murmu assaulted Chota Mandal Hansda with Chhura causing injuries at his right abdomen and right chest. Accused Chunka Murmu assaulted Supai Hansda with lathi causing fracture of his left wrist. Tulsi Hansda assaulted Subodi Hembrom with Lathi causing injuries on her head and leg. Accused Labu Pujahar, Kamal Singh assaulted Tulsi Hansda, daughter of Nanda Hansda with lathi causing injuries on her right hand and accused Chunka Murmu assaulted Chanda Hansda with Lathi causing injuries on her head and, thereafter, all the accused persons fled away. The accused and other injured were brought to the Masalia Police Station by the informant and witnesses. Dahu Hansda, however, died on way while he and other injured were being brought by Masalia Police Station. In absence of S.I. of Police at that time at Masalia Police Station, a constable recorded the statement of Ramjiwan Hansda disclosing the aforesaid fact which was recorded vide Sanha Enty No. 363 dated 25.07.1979 at 10:30 am vide Ext. 13, which is original Sanha Entry and its copy has also been substituted. It was treated as Fardbayan and the formal FIR (Ext. 11) was drawn up on that basis. Subsequently, accused Bara Mangal Hansda also succumbed to his injuries. 4 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` 5. On conclusion of investigation, the Investigating Officer submitted chargesheet against the twelve accused persons named above besides accused Girish Marandi (since deceased). Accused Tulsi Hansda and Chita Hansda who were named in the Fardbayan were however not sent up. Further, accused Bedi Tudu also died before submission of charge sheet. All the twelve accused persons besides Girish Marandi (since deceased) were charged under section 302/149 of the Indian Penal Code for causing murder of Dahu Hansda and Bara Mangal

Hansda in furtherance of their common object of causing murder. Besides, accused Chunka Murmu was further charged for the offence under Section 324 IPC and accused Chunka Murmu and Labu Pujahar were further charged for the offence under Section 323 of the Indian Penal Code. Accused Chunka Murmu was further charged for the offence under Section 148 of the Indian Penal Code while the remaining accused persons were further charged for the offence under Section 147 of the Indian Penal Code. 6. During course of trial the prosecution has examined altogether 14 witnesses. P.W.1 is Supal Hansda, P.W.2 - Subodhi Hembrom is wife of P.W.1, P.W.3 is Jitan Marandi, P.W.4 is Kiran Hansda, P.W.5 is Hopna Hansda, P.W.6 is Ramjivan Hansda, P.W.7 is Mangal Hansda, P.W.8 is Guneshwar Hansda, P.W.9 is Gungeshwar Hansda, P.W.10 is Dr. Upendra Prasad Sinha, P.W.11 is Shiblal Hansda, P.W.12 is the Investigating Officer, P.W.13 is Manager Marandi and P.W.14 is Sushil Chandra Biswas. Out of aforementioned witnesses, Hopna Hansda (P.W.5) was tendered and Sushil Chandra Hiswar (P.W.14) has proved the original Sanha entry no. 363, dated 25.07.1979 (Ext.13) which has been treated as Fardbayan in this case. The investigating officer (P.W.12) claimed to have prepared the Inquest Report in carbon process (Ext.12) of 5 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` the dead body of Dahu Hansda which was brought by the witnesses and the informant at Masalia P.S. and had sent the dead body for postmortem examination to Sadar Hospital, Dumka. Bedi Tudu has already died as per prosecution and Tulsi Hansda and Chitta Hansda were not sent up by the Police. 7. Dr. Upendra Prasad Sinha (P.W.10) claimed to have conducted postmortem examination on the dead body of Dahu Hansda at Sadar Hospital, Dumka on 26.07.1979 and found antemortem injuries on his person. There was fracture of right parietal bone corresponding to both the injuries noted above. A large haematoma was present underneath the fracture above the brain substance. In his opinion, the death of Dahu Hansda was due to shock and hemorrhage and either of the injuries nos. 1 and 2 noted above separately or combined was sufficient to cause death in ordinary course of nature, while the injury no. 1 was caused by sharp cutting weapon, injury no. 2 was caused by hard and blunt substance. On the same day at 1:30 p.m., the Doctor (P.W.10) claimed to have conducted postmortem examination on the dead body of Bara Mangal

Hansda and found the antemortem injuries. In his opinion, death was due to shock and hemorrhage and both the injuries either separately or combined together was sufficient in the ordinary course of nature to cause death. Time elapsed since death was within 48 hours. He further stated that both injuries were stitched from before, so the nature of weapon used could not be ascertained. Thus, on the basis of the aforesaid evidence of the doctor (P.W.10) coupled with the carbon copy of postmortem report, it is held that death of both Dahu Hansda and Bara Mangal Hansda was homicidal in character. 8. Supal Hansda (P.W.1) stated that at the relevant time he had gone to watch his field in which he had grown paddy seedling. 6 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` When he found that accused Darbari Murmu, Chunka Murmu, Tulsi Hansda, Chhita Hansda, Bodi Tudu, Jurgu Hembrom, Kiran Khaira, Dhiren Khaira, Shiba Pujahar, Phule Pujahar, Munshi Hembrom, Girish Marandi, Das Marandi, Rabi Pujahar and Kabiraj Soren were uprooting the paddy Seedlings from his field. This witness further stated that he along with other witnesses and Dahu Hansda and Bara Mangal Hansda orally restrained the accused persons from uprooting the paddy seedlings, which led to some altercation between them. Accused Munshi Hembram Hansda pacified the informant and his men but Munshi Hembram Hansda again went to the side of the accused persons and instigated them to assault the informant and his party men. He further stated that uprooting of paddy seedlings had taken place in the field of J.B. No. 29 where the dispute had started between the informant and his men and these accused persons and that actual assault had taken place in the field of JB No. 79. He further stated that Darbari Murmu had assaulted Dahu Hansda with Lathi and Chunka Murmu had assaulted Dahu Hansda with Lathi as well as with Chhura which had pierced into his temporal region. According to him, accused Dhiren Khaira had also assaulted Dahu Hansda with Lathi. Surprisingly, in course of his evidence, P.W.1 has stated that when he reached at the place of occurrence, he found Dahu Hansda already lying dead and that Bara Mangal Hansda was sitting having blood injuries and thereafter he went to Basti to inform the Chowkidar. This witness further stated that P.W.6, P.W.11, P.W.8 and Hushi Hansda had reached at the place of occurrence simultaneously i.e. after death of Dahu Hansda. 9. P.Ws.2, 3, 4 and 6 claim to have been present at the place of occurrence with P.W.1, P.W.6, P.W.7,

P.W.11, Halsi Hansda, Jitan Hansda and two deceased persons Dahu Hansda and Bara 7 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` Mangal Hansda. She stated that accused Chunka Murmu assaulted Dahu hansda with Chhura causing injury in his head and accused Kiran Khaira assaulted Bara Mangal Hansda with Farsa at his head. She could not name assailants who assaulted Supal Hansda, Subodi Hansda and Chota Mangal Hansda. However she stated thereafter that when she reached at the place of occurrence, she found Dahu Hansda dead and Bara Mangal Hansda was having bleeding injury. P.W.7 is the injured witness. Though he stated that the quarrel took place due to uprooting paddy seedlings but he too admitted that he reached to the place of occurrence on call from Supai Hansda and he saw Dahu Hansda dead and Bara Mangal Hansda injured. P.W.8 though claims to be eyewitness to the occurrence but he could not name the assailant. From the evidence of P.W.1 it appears that P.W.8 also reached after death of Dahu Hansda whereas Bara Mangal Hansda was injured. P.W.11 came out with another story of beating of drum which has not been corroborated by any witnesses. P.W.13 though claims to have seen the occurrence but he could not say the weapon used by the assailants. P.W.12 i.e. the Investigating Officer has mentioned three different places as the place of occurrence and thus has come up with a different story than the so called eye witnesses. 10. Mr. Jitendra Shankar Singh, learned counsel for the appellants strongly contended that the trial court has committed grave error by convicting these appellants as there is no finding of forming unlawful assembly with common object. The witnesses have accepted that they reached the place of occurrence after death of Dahu Hansda. Though the witnesses claimed to be eye witnesses but have accepted that when they reached place of occurrence they found Dahu Hansda lying dead and Bara Mangal Hansda was having 8 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` bleeding injury. Learned counsel further points out to the contention that P.W.1 had stated that deceased Dahu Hansda had sustained only one Chhura blow but had sustained several lathi blows causing fracture almost on all parts of his body but the postmortem report is contrary and doctor had found only one lacerated wound caused by hard and blunt substance besides one incised wound. Learned counsel further contends that from the evidence on record it shows that the land in

dispute belonged to ancestor of the appellants and they are in possession and paying rent to the government and the prosecution has no right to trespass over the said land and these aspects were never taken into consideration by the Court below. Learned counsel further drew attention of this Court that the place of occurrence is not clear and even the Investigating Officer has mentioned three different places as the place of occurrence. The prosecution could not bring out the reason as to what the informant party were doing at the time and place of occurrence. Learned counsel further contends that from the injury report also it is not clear that who had given fatal blow on head of the deceased and without appreciating these facts, the Court below convicted the appellants illegally without any evidence. Learned counsel further submitted that report of the forensic expert was not produced by the Court and nonproduction of the same casts a grave doubt on the case of the prosecution but the Court did not consider this aspect of the matter. It is further submitted that bloodstained earth found from the place of occurrence was not sent to the forensic expert and no report was produced before the court to this effect. Learned counsel draws attention of this Court to the court question put before the witnesses. All the witnesses have answered in the similar fashion that when they reached at the place of occurrence, they found Dahu Hansda dead and Bara Mangal Hansda was having 9 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` bleeding injuries. Learned counsel further submits that it is a clear case where manner, time and place of occurrence is missing and as such the appellants are liable to be acquitted. 11. On the other hand State represented by learned APP vehemently opposed the contention of the learned counsel for the appellant. The learned APP draws attention of the Court to the statement of P.W.1 which specifically proves the allegation against the appellants. Learned APP contended that the eyewitnesses have specifically stated about the assault. The Investigating Officer has found the uprooted seedlings at the place of occurrence. The appellants cannot be given benefits of doubt or the fact that they are agnates. 12. From the evidence and impugned Judgment it appears that accused Jurgu Hembrom, Girish Marandi, Shiva Pujahar, Phulu Pujahar, Rabi Giri, Dhiren Khaira, Daso Marandi and Kubraj Soren have been acquitted of charges framed against them and they have been acquitted. The parties are agnates and land in dispute belonged to the

ancestors of the appellants. There is no clear finding as to who had given fatal blow on the head of the deceased. The admitted fact is that the parties are agnates and were in litigating terms and therefore false implication is obvious. P.W.1 in his evidence has accepted that when he reached at the place of occurrence, he found Dahu Hansda already lying dead and that Bara Mangal Hansda was sitting having blood injuries. This witness further stated that P.W.6, P.W.11, P.W.8 and Hushi Hansda had reached at the place of occurrence simultaneously i.e. after death of Dahu Hansda. We are thus of the view that the accused deserves benefits of doubt. This court cannot shut its eyes to the fact that the witnesses themselves accepted that when they reached at the place of occurrence, they found Dahu Hansda dead and Bara Mangal Hansda was having bleeding injuries and thus inference may be 10 Criminal Appeal (DB) No. 210 of 1991 (P) WITH Criminal Appeal (DB) No. 290 of 1991 (P) ` drawn that they could not see the assailant and chances of false imprisonment of agnates with whom they have land disputes, could not be discarded. The place of occurrence is also not clear and even the investigating officer could not describe exact place of occurrence. 13. In the facts and circumstances of the case at hand we are of the considered view that the appellant is entitled to the benefits of doubt and the impugned Judgment of conviction and sentence cannot be sustained in the eyes of law. Accordingly, the impugned Judgment of conviction and sentence dated 31st Day of May, 1991 passed by the IInd Additional Sessions Judge, Dumka, S.P. in connection with Sessions Case No. 127 of 1988 is hereby set aside and the appellants are given benefits of doubt and are acquitted of the charges. The appellants are on bail, are discharged from the liabilities of their bail bonds and set at liberty. In the result, this appeal stands allowed. Let the lower court record be sent back forthwith. (Dr. S.N. Pathak, J) H.C. Mishra, J. (H.C. Mishra,J.) Dated the January 31, 2017 High Court of Jharkhand at Ranchi RC/A.F.R.

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