

Raiman Hembram and Ors. Vs. State

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Court : Jharkhand

Decided On : Mar-26-2015

Appellant : Raiman Hembram and Ors.

Respondent : State

Judgement :

1 Criminal Appeal (DB) No.361 of 2000(P) WITH Criminal (Jail) Appeal (DB) No. 435 of 2000(P) --- [Against the judgment of conviction and order of sentence dated 20.06.2000 passed by learned Additional Sessions Judge, Pakur in Sessions Case No. 225 of 1999/38 of 1999] ---- In Criminal Appeal (DB) No.361 of 2000(P) 1. Matal Murmu 2. Dabru Murmu Both sons of late Babla Murmu 3. Raiman Hembram son of Kapil Hembram residents of Village Khairbari, P.S. Maheshpur, District Pakur. Appellants -versus- The State of Jharkhand Respondent ---- In Criminal (Jail) Appeal (DB) No.435 of 2000(P) 1. Raiman Hembram son of Kapil Hembram, resident of Village Akharasol, PS Maheshpur, Dist Pakur.

2. Matal Murmu 3. Dabaru Murmu Both sons of late Babla Murmu, both residents of village Khairbari, PS Maheshpur, District Pakur. Appellants -versus- The State of Jharkhand Respondent ---- For the Appellants : Mr. Ranjan Kumar Singh, Advocate For the State : Mr. T.N. Verma, APP --- PRESENT HON'BLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE APARESH KUMAR SINGH ---- The 26th of March, 2015 Per Virender Singh, C.J.

(Oral) Both the appeals on board are filed by the same three accused, namely, Matal Murmu, Dabru Murmu and Raiman Hembram, one of the appeal [Criminal Appeal No.435 of 2000(P)] filed through jail and registered subsequently.

2. Accused-Raiman Hembram is stated to be in custody for the last about 2 15 years, whereas his two co-convicts, namely, Matal Murmu and Dabru Murmu are on bail as their substantive sentence was suspended by the Court on 9th August, 2000. Considering the incarceration period of accused-Raiman Hembram, priority has been given to the present case.

3. Vide impugned judgment of learned Additional Sessions Judge, Pakur dated 20th of June, 2000 all the three appellants (for short, hereinafter, to be referred to as accused) stand convicted under Section 302/34 IPC and sentenced to undergo rigorous imprisonment for life for allegedly committing the murder of one Chote Murmu on 18.06.1999 at around 06.30 p.m. in the field of one Murgadanga falling within jurisdiction of police station Mahespur.

4. The first information was lodged on 19th June, 1999 at about 10.30 a.m. by PW Mangal Murmu, the real brother of the deceased and accused Nos.1 and 2-Matal Murmu and Dabru Murmu. Accused-Raiman Hembram is son-in-law of the accused-Matal Murmu. In this way, it is one family only.

5. PW-Mangal Murmu alleged that they were living in village Khairbani, where his father had acquired land being a Ghar Jamai. Apart from that, they had also some paternal land in the Village Murgadanga but with regard to the said land, no partition had taken place amongst the brothers. It is then alleged that few days prior to the occurrence, Matal Murmu had sold one Lapang tree without informing the other brothers and this issue landed before Pradhan of Village Murgadanga, where a fine of Rs.20/- was imposed on the complainant side and a fine of Rs.140/- slapped upon accused Matal Murmu and Dabru Murmu. Fine was paid by both the parties and then they brought liquor. It is then alleged that after taking liquor, the informant and the present three accused were going back to the village along with the deceased and when at about 6.30 p.m. they reached near southern side of Village Murgadanga, a quarrel took place between the brothers upon which accused 3 Matal Murmu and Dabru Murmu pushed the deceased on the ground

and then accused Raiman Hembram who was having knife, took out the same and gave 8-9 knife blows on the person of the deceased, who died at the spot. All the accused then fled away from the place of occurrence. Certain villagers, who had assembled there, saw the accused fleeing away from the place of occurrence. On these allegations, F.I.R. being Case No.35 of 1999 (P.S. Maheshpur) came to be registered in the police station under Section 302/34 IPC, investigation thereof was carried out by PW Naresh Chandra Mishra, which on its completion culminated into filing of Challan against all three accused, who faced trial for the charge under Section 302/34 IPC and now stand convicted and sentenced, as indicated hereinabove.

6. The prosecution in support of its case has examined the following witnesses: - PW-1 Leelmuni Marandi is wife of the deceased and she is a hearsay witness. PW-2 Dinesh Murmu is the signatory to the inquest report. PW-3 Simal Murmu is also signatory to the inquest report. However, these two witnesses also talk about the proceedings of Panchayat. PW-4 Mangal Murmu is the informant and the eye witness to the occurrence. In fact, the entire prosecution case is hinging upon his evidence, which requires to be discussed in detail. PW-5 Dr. S.K. Mehrotra conducted autopsy over the dead body of the deceased and notice the following injuries: - (i) Multiple sharp cut injuries (nine in numbers) of varying sizes between 2 x 1/2" to 1 x 1/2" x cutting of bones of upper and lower jaws of right side of face. (ii) Sharp cut injury 1/2" x 1/2" over lateral part of eye ball and penetrating into cranial cavity with injury of brain matter of right parietal region. (iii) Fracture of left third and fourth ribs anteriorly and haemothorax with laceration of left lung tissue. 4 Heart-All chambers were empty, lungs, liver, Spleen, Kidneys were found pale. Stomach contained liquid, Intestine contained gas and fecal matter. Urinary bladder was found empty. Organs of generation was intact. Injury No.(i), (ii) were caused by sharp cutting and pointed weapon. Injury No.(iii) was caused by hard and blunt substance. Injury opinion- The cause of death was hemorrhagic shock due to above mentioned injuries. Time elapsed since death was about 40 - 50 hrs. PW-6 Naresh Chandra Mishra is the Investigation Officer, who proved the Fardbeyan of PW-Mangal Murmu and the investigation carried out by him. PW-7 Ajay Kumar Singh happens to be S.H.O. of the police station and he on completion of the investigation submitted the chargesheet against the accused

persons.

7. The case of the accused, as one finds from the statement recorded under Section 313 Cr.P.C. is of denial simpliciter. They have chosen not to produce any witness in defence.

8. Heard learned counsel for both the sides and gone through the Trial Court Record.

9. It is contended on behalf of the accused that there is delay in lodging the F.I.R.; the ocular evidence is not getting any corroboration from the medical evidence, inasmuch as the case set up by PW-Mangal Murmu is that all the injuries on the person of the deceased were caused with the knife which accused Raiman Hembram was having in his hand, whereas one of the injuries noticed in the autopsy of the deceased i.e. injury No.(iii), depicts that it was caused by heavy blow, resulting into fracture of 3 rd and 4th ribs, whereas no blunt weapon is allegedly used by any of the three accused; evidence of PW-4 is not getting any corroborative support from any other 5 independent witnesses, whereas it has come in his initial statement that certain villagers had assembled at the spot and seen the accused running from the place of occurrence; the weapon of offence has not been seized by the investigating agency in the present case and this also turns out to be a major flaw in the investigation; there appears to be no strong motive with the accused persons to commit the murder of the deceased and this weakness goes deep to the roots of the prosecution case to dislodge it in its entirety.

10. Per contra, learned State Counsel submits that there appears to be no reason to disbelieve Mangal Murmu, who happens to be with the deceased right from the stage of holding of Panchayat; there appears to be motive in this case also as the land between the brothers had not been partitioned and on this count only a dispute had arisen when accused Matal Murmu had sold Lapang tree without informing the complainant side, which matter was subsequently settled by the Pradhan of Panchayat, in which both sides were penalized; there is no dearth of injuries on the person of deceased. The accused, thus, have no escape from the charge of Section 302/34 IPC for which they stand convicted and sentenced.

11. After re-scanning the entire prosecution case in its right perspective and considering the contentions urged on behalf of the accused, we are of the considered view that prosecution has been able to prove the complicity of all the three accused beyond any shadow of reasonable doubt.

12. No doubt, there appears to be some delay in lodging the First Information Report in this case as the occurrence is of 18th June, 1999 at around 06.30 p.m. whereas the police was informed of the same on 19th June, 1999 at about 10.30 a.m. by PW Mangal Murmu, the real brother of the deceased. But, delay in lodging the F.I.R. is not by itself fatal to the case as set up by prosecution, nor can delay, itself, create any suspicion about the truthfulness of the version given by the complainant. Prompt lodging of the report may be no guarantee about its being wholly truthful. It is commonly noticed that the villagers do consume some time for approaching the police and that appears to be the reason that PW Mangal Murmu went to the police station on the next day and disclosed about the entire occurrence. We are conscious of the fact that the complainant is not tendering any explanation for the delay of 12 hours in lodging the report, yet his evidence cannot be seen with an eye of suspicion for a very simple reason that he is not taking any advantage of the delay at all. There appears to be no dearth of injuries on the person of the deceased in this case and if the complainant had to falsely involve any body, he could attribute any injury to any of his two brothers, the accused herein along with accused Raiman Hembram, son-in-law of accused Matal Murmu. We are also conscious of the fact that there is a land dispute going on between the complainant and accused No.1 and 2, as the same was not partitioned, but false implication in this case does not spring from this enmity. Appreciating the case from that angle, the delay if any has occurred in lodging the FIR with the police would not be fatal to the prosecution.

13. Much has been said by counsel for the accused with regard to variance between medical evidence and ocular evidence taking the advantage from injury No.3 resulting into fracture of left 3rd and 4th ribs, which has caused laceration of left lung tissues as this injury could not be possible by knife. However, we do not accept the said contention. It is the case of the prosecution that accused No.1 and 2 had pushed the deceased on the ground and thereafter accused Raiman

Hembram took out the knife and caused injuries on the person of the deceased. Injury No.3 could be possible by forceful push given to the deceased by accused No.1 and 2, consequently he fell on the ground. May be, in his cross examination PW Dr. Mehrotra has 7 stated that injury No.3 could be caused by heavy blow of lethal weapon, but it cannot be said that but for knife, some other blunt weapon was also used in the occurrence. It is an opinion of the doctor and need not become the last word on such possibilities, as held by Honble Supreme Court in case Ramanand Yadav versus Prabhu Nath Jha and others reported in (2003) 12 SCC606 wherein there was some variance between medical evidence and ocular evidence. The Honble Supreme Court observed in paragraphs 17 and 18 as under: - 17. So far as the alleged variance between medical evidence and ocular evidence is concerned, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as is claimed to have been inflicted as per the oral testimony, then only in a given case the court has to draw adverse inference.

18. The High Court has thus knocked out an eyewitness on the strength of an uncanny opinion expressed by a medical witness. Overdependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitness versions to be true. A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or post- mortem features which he noticed in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all, he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice.

14. Much has been said about motive also by the learned counsel for the 8 accused. The motive was there in the bosom of accused No.1 and 2, who were

slapped with some fine in the Panchayat held on asking of the complainant side. May be accused Raiman Hembram had no direct motive in his bosom, viz. to commit the murder of the deceased, but, when he saw his two co-accused fighting with the deceased, he took out the knife and brutally assaulted the deceased. It is well settled that motive, otherwise, pales into insignificance if the eye version account is believable, but, here in the present case, there was certainly a motive, may be trivial in its nature.

15. No doubt some lapses have occurred in the investigation of this case, but, all those would pale into insignificance once we find the case of the prosecution as unfolded to be truthful and acceptable. PW Mangal Murmu happens to be most natural and truthful witness upon whose evidence the entire prosecution case is hinging. If the evidence of solitary witness is creditable, trustworthy, there should not be any reason not to accept it without asking for corroboration. It is well settled that there are exceptional circumstances when corroboration is required and the present case is not of that type. PW Mangal Murmu, undoubtedly, is a related witness, but, related to the deceased as well as accused No.1 and 2, all four being the real brothers. We have, however, applied the test of careful scrutiny of evidence of this solitary witness and find the same to be trustworthy for holding the conviction of all the accused for the charge of Section 302/34 IPC. We have no manner of doubt that the nature of injuries caused to the deceased are clearly indicative of accused having had the intention of killing the deceased.

16. As a sequel to the aforesaid discussions, the net result surfaces is that all the three accused deserves to be convicted for offences punishable under Sections 302/34 IPC. Their conviction and sentence, as recorded by the learned Trial Court for the said charge is thus confirmed. 9 17. Resultantly, both the appeals on hand stand dismissed.

18. Two of the accused, namely, Matal Murmu and Dabru Murmu, are stated to be on bail as their substantive sentences were suspended by this Court. Their bail bonds shall now stand cancelled. They shall be taken into custody for serving the remainder of their substantive sentences. Accused Raiman Hembram is already languishing in the jail. He shall serve the remainder of the sentence.

19. Learned Trial Court shall be informed of the outcome of the instant appeals without any delay enabling it to take all required steps for taking into custody accused Matal Murmu and Dabru Murmu.

20. Trial Court Record, in original, shall be remitted to the Court concerned.
(Virender Singh, C.J.) (Aparesh Kumar Singh, J.) High Court of Jharkhand, Ranchi
Dated, the 26th of March, 2015 G.Jha/LAK NAFR

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