

Ram Pada Hembrom and ors. Vs. State of Jharkhand and anr.

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Court : Jharkhand

Decided On : Nov-20-2007

Reported in : [2008(2)JCR346(Jhr)]

Judge : D.P. Singh and; D.K. Sinha, JJ.

Appellant : Ram Pada Hembrom and ors.

Respondent : State of Jharkhand and anr.

Disposition : Appeal allowed

Judgement :

D.K. Sinha, J.

1. The Criminal Appeal is directed against the judgment of conviction and order of sentence passed by Shri Krishna Murari, 1st Additional Sessions Judge, Jamshedpur in S.T. No. 766 of 1994/14 of 1995 on 15.11.1999 and 19.11.1999 respectively whereby and whereunder the appellants have been convicted under Sections 302/149, 201/149 of the Indian Penal Code and each of them was sentenced to undergo imprisonment for life and three years imprisonment respectively on each count. Both the sentences were directed against each of the appellants to run concurrently.

2. The prosecution story as it stands narrated in the fardbeyan of the informant Maheshwar Hembrom (PW 3) recorded on 12.6.1994 at about 12 hours before the Ghatsila Police at the alleged place of occurrence was that on 9.6.1994 he along with his brother Krishna Hembrom (since deceased) while returning to their village at about 7 p.m. after serving notice of panchayat upon Purno Manjhi (not examined) were held up by the appellants while both of them were about to reach their village. All the appellants belonged to village Puljor Kashidanga under the Ghatsila Police Station. The informant alleged that all the five appellants caught hold his elder brother, Krishna Hembrom and one them Ram Pado Hembrom inflicted blow with kulhari (Axe) on his head as a result of which his brother fell down on the ground sustaining injuries on his head. The informant further narrated that he attempted to escape after witnessing the occurrence of assault on his brother but he was over-powered by the accused Pandas Hembrom who forcibly brought him to the house of the appellant Ram Pado Hembrom and gagged his mouth preventing from crying and also by extending threat to his life. The informant was then brought to the house of the appellant Binod Hembrom where he was assured to be let-off only after arrival of other three appellants, Rampado Hembrom, Mongla Hembrom and Ramesh Hembrom. On their arrival the informant was allowed to return and he left the place running and narrated the occurrence to his father in his home. The informant further narrated that his father Sarkar Hembrom (PW 2) tried to persuade the villagers to accompany him to the place of occurrence but none of them paid any heed to it out of fear. In spite of extensive search Krishna Hembrom could not be located dead or alive in the night and also on subsequent days. On the informant Maheshwar Hembrom, Ghatsila P.S. Case No. 63 of 1994 was registered under Sections 147/148/149/307/364 of the Indian Penal Code against the appellants and after recovery of the de'ad body of Krishna Hembrom Section 302/201, IPC was added in the FIR on 19.6.1994. The Investigating Officer submitted charge-sheet against all the five appellants for the offence under Sections 147/148/149/307/364 of the Indian Penal Code against the appellants and after recovery of the de'ad body of Krishna Hembrom Section 302/201 of the Indian Penal Code after investigation. Admittedly, the FIR was instituted on 13.6.1994 after four days of the alleged occurrence and the dead body alleged to be of Krishna Hembrom was recovered on 15.6.1994 in putrified

condition. According to the defence, the dead body in complete putrified condition with skull without brain matter and skeleton without sufficient flesh was not in a position to be identified.

3. Altogether nine witnesses were produced and examined on behalf of the prosecution. Besides, the prosecution proved signature of PW 1 Boloram Hembrom (PW1) on the seizure list Ext. 1, signature of the informant Maheshwar Hembrom on the fardbeyan Ext. 1/a, signature of Bal Hari Hembrom on the inquest report Ext. 1/b, post- mortem report Ext. 2, formal FIR Ext. 3, entire fardbeyan Ext. 4 endorsement on fardbeyan Ext. 5 and the inquest report Ext. 6.

4. After aducement of the prosecution evidence all the appellants were separately confronted with incriminating materials produced on the record, but each of them denied guilt in his statement recorded under Section 313, Cr PC and declined to adduce defence witness.

5. The learned Counsel for the appellants submitted that the entire prosecution case was based upon the evidence of a child witness (PW 3) who at the relevant time was only 12 years and claimed to be eye-witness yet, the trial Court without testing his mental ability recorded the judgment of conviction of the appellants relying upon his testimony without any corroborative evidence. It was not safe for reliance upon a child witness without being satisfied by testing in order to assess the level of intelligence by putting questions to him and the possibility of a child witness of being tutored by interested persons cannot be ruled out. The learned Counsel further pointed out that there was no material witness on the record so as to corroborate and adduce evidence by putting circumstances, leading to the complicity of any of the appellants for the alleged charge. PW 1 Bolram Hembrom, PW 2 Sarkar Hembrom, PW 4 Habudas Mahto were interested and hearsay witnesses who derived information from the informant. Similarly PW 5 and PW 7 were tendered on behalf of prosecution. PW 8 Dr. Ranjan Sinha held autopsy on the dead body whose identity could not be established and PW 9 Ratan Lal was a formal witness.

6. The learned Counsel exhorted that the trial Court failed to take into consideration that fardbeyan was recorded on 12.6.1994 at about 12 hours after

three days of the alleged occurrence without plausible explanation of inordinate delay and the FIR was lodged on 13.6.1994. It was not the fact that the fardbeyan was recorded after recovery of the dead body on 15.6.1994 and the prosecution failed to explain the delay as well as consistently in its case giving rise to an inference that the informant and other interested witnesses took three days in consultation and deliberation in making up their minds to implicate the appellants in a serious case of culpable homicide amounting to murder and on this score alone the prosecution case was fit to be disbelieved.

7. According to the learned Counsel, the Investigating Officer abstained from the witness box causing serious prejudice to the appellants as they were deprived of the right to cross-examine him in respect of place of alleged occurrence, nature of recovery of the dead body, its identification and the corresponding injury found in the post- mortem report. The learned Counsel pointed out that according to the testimony of the informant, several blows with kulhari (axe) were inflicted by the appellant Ram Pado Hembrom but only one injury was found on the head of the dead body which belied prosecution case as well as the testimony of informant.

8. The learned Counsel pointed out and emphatically submitted that admittedly there was land dispute between the parties for the last 10/15 years. Enmity cuts both ways and therefore it was not safe for the trial Court to record the judgment of conviction without corroborative evidence.

9. It was alleged that blood stained wooden bat purported to be of an Axe and blood stained earth were recovered from the place of occurrence but not sent to the Forensic Science Laboratory to compare the blood with that of the cells of the dead body so as to establish the identity of the dead body and also establish the alleged place of occurrence. Yet the seizure list was not proved. The prosecution failed to produce the axe alleged to be used in attack.

10. Advancing his argument the learned Counsel submitted that the dead body was recovered on 15.6.1994 in highly putrified condition with skull without brain matter and skeleton without flesh and maggots crawling all over the body. It was neither in a position to be identified nor any witness testified having identified it. Similarly, none of the prosecution witnesses claimed to identify the body on the

basis of wearing clothes on it. In this manner the prosecution failed to establish that the dead body, which was recovered on 15.6.1994 from the forest, belonged to none other than Krishna Hembrom.

11. Similarly, according to the learned Counsel, there was no allegation of direct assault against the other four appellants but they have also been convicted for the charge under Sections 302/149 and 201/149 of the Indian Penal Code. The fardbeyan recorded on 12.6.1994 was the basis for the FIR lodged on 13.6.1994. Yet the same was transmitted on 14.6.1994 but surprisingly, was shown to have been received by the ACJM, Ghatsila on 13.6.1994 without any explanation of such inconsistency. Finally, the learned Counsel submitted that according to the doctor PW 8, the dead body was produced and identified by three Chow-kidars before the post-mortem examination but none of the Chowkidars was examined in the trial Court. Their abstinence from the witness box. therefore, gives rise to adverse inference under Section 114(g) of the Indian Evidence Act. In view of the above arguments the learned Counsel urged that the judgment of conviction for the alleged charge recorded against the appellants was unsustainable and therefore, they may be acquitted by allowing this appeal.

12. Heard Mr. V.S. Sahay. the learned A.P.P. on behalf of the State.

13. Having regard to the facts and circumstances of the case, we find that occurrence as alleged took place on 9.6.1994 but the fardbeyan of the informant (PW 3) Maheshwar Hembrom was recorded on 12.6.1994 without plausible explanation of inordinate delay. It was casually explained by the witnesses that they took sometimes in searching out the dead body of Krishna Hembrom (deceased) but even on the date of recording i.e. 12.6.1994 the dead body was not located. FIR was lodged on 13.6.1994 at Ghatsila police station and formal FIR was shown in column No. 3 having been transmitted on 14.6.1994 from the police station but it was shown to be received by ACJM, Ghatsila on 13.6.1994 i.e. a day prior to its transmission to which no explanation has been accorded by the prosecution side. Admittedly, a dead body was spotted and recovered on 15.6.1994 and its autopsy was held by Dr. Ranjan Sinha (PW 8) on 16.6.1994 at Ghatsila Primary Health Centre. Before initiating post-mortem examination on the

dead body of Krishna Hembrom an endorsement was made to the effect that it was the dead body of Krishna Hembrom aged about 25 years male S/o Sarkar Hembrom of village Phujore Kasidanga, brought and identified by Chawkidars namely, Bharat Bhumji, Satish Munda and Dulal Bhumji. But none of the Chawkidars was produced and examined on behalf of the prosecution so as to testify as to under what manner and on whose instance they identified the dead body which belonged to none other than Krishna Hembrom and what was the source of identification of the dead body.

14. PW 8 Dr. Ranjan Sinha in his substantive evidence testified that the body was found in putrified condition with foul smelling with maggots crawling all over the body.

Skull was found without brain matter with fracture of skull appeared to be cut by hard cutting weapon with mark of deep cut on the skull with tailing. The witness further found that both thighs were present in the dead body with lacerated wound on the left thigh of dimension 3' x 2' x 1' and the rest of body was devoid of soft tissues, viscera and skin. Only bones of rib of the chest were found present. Doctor testified that injuries were ante-mortem in nature and death was on account of shock and bleeding caused due to head injuries, death was occurred within a week of the post-mortem examination.

15. The learned Counsel for the appellants urged that the injury found on the skull of the dead body was not corresponding to the manner of assault as testified by the informant (PW 3) before the trial Judge as contained in paragraph 10 under cross-examination wherein the informant, who claimed to be an eye-witness of the alleged occurrence, deposed that the appellant Ram Pada Hembrom dealt 3-4 blows with kulhari (axe) and he escaped after the first blow was dealt on the head of his brother.

16. We find substance in the argument that the appellants have been prejudiced for non-examination of the Investigating Officer who had interrogated the witnesses, visited the alleged place of occurrence and collected blood stained earth and blood stained stick alleged to be the handle of the Axe used in assault. But neither the Investigating Officer could be produced and examined on behalf of

the prosecution nor seizure list was proved in the trial Court. We further find substance in the argument that neither blood stained earth nor blood stained stick was sent to the Forensic Science Laboratory for D.N.A. test and its compare with cells of tissues found on the dead body to establish the identity that it belonged to none other than Krishna Hembrom. We further find substance in the argument that the appellants have been deprived of opportunity of cross-examine the Investigating Officer in respect of the place from where the dead body was recovered and by whom it was identified. The inquest report, though is in the record but not proved which indicates that the dead body had wearing of ganji and full pant of black check but without seizure list of such cloths and similarly no material on the basis of which any of the prosecution witnesses claimed to identify the dead body and there was injury on the head and thigh. The inquest report is silent in respect of any injury found on the dead body except the opinion of the Investigating Officer that death was caused due to culpable violence. There appears substance in the argument of the learned Counsel for the appellants that the prosecution failed to prove the case consistently by not producing the material witness Purno Manjhi giving rise to adverse interference under Section 114(g) of the Indian Evidence Act. The specific case of the prosecution was that while the informant with his elder brother Krishna Hembrom was returning at about 7 p.m. after serving a notice upon Purno Manjhi issued by Panchayat Mukhiya PW 1, Krishna Hembrom was held up by the appellants and one of them Ram Pada Hembrom assaulted by inflicting blow on the head of Krishna Hembrom with kulhari (axe). The informant narrated that he along with his brother (since deceased) had been to the village of Purno Manjhi to serve notice in respect of certain land dispute though Panchayat Mukhiya (PW 1) Boloram Hembrom did not corroborate that he has ever issued notice upon Purno Manjhi calling upon Krishna Hembrom for service. Admittedly, Krishna Hembrom was not in the service of village panchayat rather, according to the father of the deceased. PW 2 Sarkar Hembrom, Krishna Hembrom was working in a crusher at Adityapur, as labourer and in this manner the prosecution failed to connect Krishna Hembrom in the service of village panchayat. Much emphasis has been laid that no question was put to the informant a child witness by the trial Court when he was produced in the witness box for testing his mental level of intelligence and that he being a

child witness, chance of tutoring him by the interested witnesses could not be ruled out. We find that Maheshwar Hembrom (informant) was 12 years at the time of the alleged occurrence but when he was brought to the witness box his age was assessed 15 years and therefore, he was no longer a child witness. Discretion was on the part of the trial Judge to assess as to whether a witness of 15 years old at all was required to undergo mental ability test. We do not find any illegality therein by not subjecting a witness of 15 to mental ability test and it was not to the subjective satisfaction of the trial Judge. We do not find reasons to interfere therein.

17. We find and hold from the facts and circumstances from which conclusion of guilt is sought to be drawn by the prosecution against the appellants have not been fully and satisfactorily established beyond all reasonable doubts. In short, the evidence on record, in view of the discussions made hereinabove, falls short of proving the guilt of the appellants for the alleged charges.

18. This appeal, therefore, is bound to succeed. The appellants, Ram Pada Hembrom, Ramesh Hembrom, Mogla Hembrom, Pandas Hembrom and Binod Hembrom are acquitted from the charges under Sections 302/149, 201/149 of the Indian Penal Code and accordingly, the judgment of conviction and order of sentence recorded against them by the 1st Additional Sessions Judge, Jamshedpur in S.T No. 766 of 1994/14 of 1995 is set aside.

19. The appellant Ram Pada Hembrom is directed to be released from the jail custody forthwith, if not wanted in any other case. The bail bonds of the other appellants stand discharged.

D.P. Singh, J.

20. I agree.