

Prema Devi ? Premi Devi Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Apr-27-2016

Appellant : Premia Devi ? Premi Devi

Respondent : State of Jharkhand

Judgement :

1 Criminal Appeal (DB) No. 164 of 2004 WITH Criminal Appeal (DB) No. 128 of 2004 WITH Criminal Appeal (DB) No. 177 of 2004 Criminal Appeal (DB) No. 164 of 2004 with Criminal Appeal (DB) No. 128 of 2004 with Criminal Appeal (DB) No. 177 of 2004 [Against the judgment of conviction and order of sentence dated 29.11.2003 in Sessions Trial No. 337/1993, passed by the Additional Sessions Judge, F.T.C. No. IV, Dhanbad, (in G.R. Case No. 4977/1992 arising out of Govindpur P.S. Case No. 326/1992] Damu Gope, son of Hari Pada Gope, Resident of - Village - Kaladabar, P.S. Govindpur, District - Dhanbad. ...Appellant [Criminal Appeal (DB) No. 164 of 2004] Premia Devi @ Premi Devi, wife of Hari Pada Gope, Resident of - Village - Kaladabar, P.S. Govindpur, District - Dhanbad. ...Appellant [Criminal Appeal (DB) No. 128 of 2004] 1. Ratan Gope, son of Late Prayag Mahto; 2. Amir Gope, son of Ratan Gope. Both Resident of - Village - Kaladabar, P.S. Govindpur, District - Dhanbad. ...Appellants [Criminal Appeal (DB) No. 164 of 2004] V e r s u s The State of Jharkhand Respondent
CORAM: HONBLE MR. JUSTICE D. N. UPADHYAY HONBLE MR. JUSTICE RATNAKER BHENGRA For the Appellants :Mr. Jitendra Shanker Singh, Advocate Mr. Vinay Kumar Tiwari, Advocate. [In Criminal Appeal (DB) No. 164 and 128 of

2004] Mr. P.P.N. Roy, Sr. Advocate. Mr. Soumitra Baroi, Advocate. [In Criminal Appeal (DB) No. 177 of 2004] For the State :Mr. Ravi Prakash, APP Order No. 17 Dated: April 27, 2016 By Court (D.N. Upadhyay, J.) Heard the parties. 2. These Criminal Appeals have been preferred against the judgment of conviction and order of sentence dated 29.11.2003 passed by Additional Sessions Judge, F.T.C. No. IV, Dhanbad, in connection 2 Criminal Appeal (DB) No. 164 of 2004 WITH Criminal Appeal (DB) No. 128 of 2004 WITH Criminal Appeal (DB) No. 177 of 2004 with Sessions Trial No. 337/1993 corresponding to G.R. Case No. 4977/1992 arising out of Govindpur P.S. Case No. 326/1992 whereby appellants have been held guilty for the offences punishable under Sections 302, 307/ 34 of the Indian Penal Code and sentenced to undergo R.I. for life under Section 302 and R.I. for seven years under Section 307 of the Indian Penal Code. The sentences so passed were directed to run concurrently. 3. The facts in brief as it appears from fardbayan of Dugain Gope (P.W.5) is that on 18.12.1992 at about 17:30 hrs. while the informant with his sons was sitting in front of his house, exchange of hot words took place between the appellants and the informant party on the point of sizing a tree which had fallen in front of the house of deceased. It is alleged that appellant Amir Gope and Ratan Gope brought out sword and farsa respectively from the house and handed it to accused Damu Gope and Samu Gope respectively. Chhotu Gope ordered to kill them whereafter Damu Gope hurled sword blow on the head of Sunil Gope, as a result he sustained injury and fell down. When the informant intervened, he was assaulted by means of Farsa by accused Samu Gope. It is further disclosed that other accused persons namely Prema Devi, Chhotu Gope and Amir Gope pelted stones whereas Samu Gope caused assault to Anil causing injury to him. On the basis of fardbayan of Dugain Gope recorded on 19.12.1992 at 11:00 hrs. in Sadar Hospital, Dhanbad, Govindpur P.S. Case No. 326/1992 under Sections 147, 148, 149, 323, 324, 447, 307 and 302 of the Indian Penal Code against appellants and coaccused Samu Gope was registered. The Police after due investigation submitted chargesheet and accordingly cognizance was taken and the case was committed to the Court of Sessions and registered as Sessions Trial No. 337/1993. Charge under section 147 IPC against appellant Prema Devi and Chhotu Gope (now dead) was framed. Except appellant Damu Gope, remaining appellants with Chhotu Gope and Samu

Gope were charged under Section 302/34 IPC whereas appellants along with 3 Criminal Appeal (DB) No. 164 of 2004 WITH Criminal Appeal (DB) No. 128 of 2004 WITH Criminal Appeal (DB) No. 177 of 2004 Samu Gope and Chhotu Gope were charged under Section 307 IPC. Damu Gope separately stood charged for the offence under Section 302 IPC. Amir Gope, Damu Gope, Ratan Gope and Samu Gope were further charged for the offence punishable under Section 148 IPC. It appears from the order sheet dated 06.06.1994 that case of Samu Gope was split up as because he was found juvenile. During trial accused Chhotu Gope died and case against him stood dropped on 13.11.1995. To substantiate the charges, prosecution has examined altogether 9 witnesses and proved documents like postmortem report and injury report. Learned trial judge, placing reliance on the evidence and documents, held the appellants guilty for the offence punishable under Section 302, 307/34 IPC and inflicted sentence as indicated above. 4. Learned counsel in Criminal Appeal (D.B.) Nos. 164 of 2004 and 128 of 2004 has stated that the witnesses in their deposition in Court has changed their version. In their statements recorded under Section 161 Cr.P.C., they have stated it was Samu Gope who inflicted Farsa blow on the head of the deceased Sunil but in their deposition in Court they have said that it was Damu Gope who inflicted injury on the head of deceased Sunil by means of sword. Since investigating officer has not been examined, the appellants got heavily prejudiced and on that score alone they are entitled for acquittal. Further contradictions are also appearing in their statements. Dr. Dhrub Kumar Dhiraj (P.W.6) has proved the postmortem report as Exhibit3. When suggestion was given to him that injuries caused to deceased may be possible by means of Tangi or Farsa, he has answered in affirmative. No suggestion has been given to him by the prosecution that injury caused to deceased Sunil are possible by means of sword. By referring statement of P.W.6, it is submitted that the injuries caused to deceased were inflicted by means of Farsa and Farsa 4 Criminal Appeal (DB) No. 164 of 2004 WITH Criminal Appeal (DB) No. 128 of 2004 WITH Criminal Appeal (DB) No. 177 of 2004 blow was given by Samu Gope. The learned Sessions Judge has wrongly held the appellant Damu Gope guilty for the offence of murder. He has further pointed out that Prema Devi [appellant in Criminal Appeal (DB) No. 128 of 2004] did nothing but she has been implicated because she is mother of appellant Damu Gope. It is disclosed in

the fardbayan and also in the deposition made by the witnesses that stones were pelted by all the accused persons named in the FIR but no injury by means of stones caused either to the witnesses or to the deceased. Therefore, learned Additional Sessions Judge has erred in holding Prema Devi with the aid of Section 34 of IPC. 5. Learned counsel appearing for the appellant in Criminal Appeal (DB) No. 177 of 2004 has taken the same plea that due to non examination of investigating officer the appellants have got prejudiced and impugned Judgment is liable to be set aside. It is submitted that P.W.5 (Dugai Gope) is the informant and he did not say that Ratan Gope brought out Farsa and handed it over to Samu Gope. The sequence of story narrated in the fardbayan is not similar to his deposition in Court. Contradictions have been taken from him in paragraphs 51 and 52 but due to nonexamination of the investigating officer, those contradictions could not be referred to the investigating officer. P.W.1 (Anil Gope) is an injured witness and contradictions from his mouth at paragraphs 19 and 36 to 39 have been taken. The contradiction taken in paragraph 19 relates to appellant Amir Gope and Ratan Gope. P.W.1 has not stated in his statement under Section 161 Cr.P.C. that Amir Gope brought out sword and handed it over to Damu Gope and Ratan Gope brought out Farsa and given it to Samu and Ratan was holding Lathi in his hand. He has further submitted that learned Additional Sessions Judge has framed Charge under Section 302 simplicitor only against appellant Damu Gope. In the charge framed under Section 302/34 IPC, name of Damu Gope is not appearing. These appellants have been convicted and inflicted sentence under Section 302/34 IPC but admitted case of the prosecution is that 5 Criminal Appeal (DB) No. 164 of 2004 WITH Criminal Appeal (DB) No. 128 of 2004 WITH Criminal Appeal (DB) No. 177 of 2004 these two appellants did not cause any assault either to the deceased or to injured witnesses P.W.1 or P.W.5. The genesis of the occurrence is also to be kept in mind. The dispute arose on account of sizing a tree which had fallen due to storm and aforesaid tree was previously standing in front of house of the informant. Both parties had been claiming their possession over the tree and that was the reason behind the altercation. Allegation of causing of assault is specific against appellant Damu Gope and co accused Samu Gope. General allegation of pelting stones has been leveled against other accused including appellants but the fact remains that no injury was caused due to pelting

of stones. Under such circumstances conviction of these appellants with the help of Section 34 IPC is unwarranted and they deserve acquittal. 6. Learned APP has opposed the arguments and submitted that all the material witnesses i.e. P.Ws.1 to 3, 5 and 7 to 9 have consistently stated that appellant Amir Gope brought out sword and handed it to Damu Gope whereas Ratan Gope brought out Farsa and handed it over to Samu Gope. Chhotu Gope ordered to kill them whereafter Damu Gope hurled blow by means of sword on the head of Sunil (deceased). When P.Ws.1 and 5 intervened they were assaulted by Samu by means of Farsa. The remaining accused including appellants had been assisting former accused Damu Gope and Samu Gope. The overt act committed by each and every accused found mentioned in the fardbayan and also in the deposition of aforesaid witnesses. Dr. Chandra Mohan Sinha (P.W.4) has proved injury report of informant Dugain Gope as Exhibit2 whereas injury report of Anil Gope (P.W.1) has been exhibited as 2/A. He has explained the injury caused to informant and those injuries were incised wound. P.Ws.1 and 5 had sustained injuries in the same incident in which Sunil was killed and, therefore, they are the best witnesses and they have fully supported the prosecution case. Patel Gope (P.W.2), Jhumpka Devi 6 Criminal Appeal (DB) No. 164 of 2004 WITH Criminal Appeal (DB) No. 128 of 2004 WITH Criminal Appeal (DB) No. 177 of 2004 (P.W.7) and Lukhiya Devi (P.W.8) are also eye witnesses and they have corroborated the contention made in the fardbayan. It is submitted that due to nonexamination of investigating officer, no prejudice has been caused to any of the appellants. No specific contradiction has been taken from the mouth of P.Ws.1, 2 or 5 that it was Samu Gope who caused assault to the deceased by means of Farsa. In absence of such reference, the examination or non examination of the investigating officer is not important. Besides the above, the informant (P.W.5) has fully corroborated the statement given by him in fardbayan. His attention towards the statement given by him in fardbayan was never drawn. No contradiction on this point has been taken from the mouth of P.W.5. On the other hand, P.Ws.1, 2, 5, 7 and 8 have consistently stated it was appellant Damu Gope who inflicted blow on the head of deceased Sunil Gope by means of sword as a result Sunil sustained head injury and fell down. In course of his removal to hospital, he died on the way. It was accused Samu Gope who inflicted blows by means of Farsa to informant and the injuries so caused found

support from Exhibit2 and evidence of P.W.4. The prosecution evidence is fully intact and consistent on the point of assault caused to deceased Sunil by appellant Damu Gope and injury caused to P.Ws.1 and 5 by means of Farsa by coaccused Samu Gope. There is no merit in these appeals and the same are liable to be dismissed. 7. Having heard both sides we have examined case records and perused the impugned Judgment. It is apparent that allegation of abettment was leveled against accused Chhotu Gope who is no more in this world and he died in course of trial. It further transpires that case of accused Samu Gope was split up considering him to be juvenile. Now we have to consider case of appellants Amir Gope, Ratan Gope, Prema Devi and Damu Gope in these three appeals. So far appellant Prema Devi is concerned, save and except she raised objection against sizing of tree, hurled abuses and pelted stones, it is nowhere stated that she participated in causing assault to 7 Criminal Appeal (DB) No. 164 of 2004 WITH Criminal Appeal (DB) No. 128 of 2004 WITH Criminal Appeal (DB) No. 177 of 2004 deceased Sunil or P.W.1 or P.W.5. We have anxiously considered the evidence of material witnesses on the point of genesis of the occurrence. According to the witnesses, a Siris Tree which was standing in front of house of the informant had fallen and it was cut into pieces by deceased Sunil. The accused persons who are named in the FIR, claiming their right over the tree concerned, raised objection against its sizing. In course of that exchange of hot words took place between Prema Devi and the informant party. Thereafter, the story brought on record by the witnesses is that Chhotu Gope ordered to cause them assault. Amir Gope brought out sword from the house, Ratan Gope brought out Farsa and those weapons were handed over to Damu Gope and Samu Gope respectively. Damu Gope inflicted sword blow on the head of Sunil, as a result he sustained injury and fell down and became unconscious. When Anil Gope and informant Dugain Gope intervened, they were assaulted by Samu Gope by means of Farsa and they sustained grievous injuries on their person. The contradictions which have been pointed out by the counsel appearing for the appellant Amir Gope and Ratan Gope is that P.W.1 has not stated before the Police that they brought out the weapon and handed it to appellant Damu Gope and coaccused Samu Gope. The informant in his fardbayan has supported this fact that appellant Amir Gope and Ratan Gope brought out weapon and handed it to appellant Damu

Gope and coaccused Samu Gope but during trial in his deposition in Court, he did not disclose name of Ratan Gope and says that Amir Gope brought out sword and handed it to Damu Gope. He has stated that Damu Gope caused assault to Anil by means of sword. When he tried to intervene, Samu Gope caused assault by means of Farsa. Patel Gope (P.W.2) did not support this fact that Amir Gope and Ratan Gope brought out weapon and handed it to Damu Gope and Samu Gope. Kalimuddin Ansari (P.W.3) is a hearsay witness. Dr. Chandra Mohan Sinha (P.W.4) has proved injury reports as Exhibits 2 and 2/A and described the injuries caused to P.Ws. 1 and 5. Dugain Gope (P.W.5) is the informant and he has reiterated the contention made in the fardbayan in his deposition in Court. So far contradictions 8 Criminal Appeal (DB) No. 164 of 2004 WITH Criminal Appeal (DB) No. 128 of 2004 WITH Criminal Appeal (DB) No. 177 of 2004 raised that Samu Gope assaulted deceased Sunil by means of Farsa is concerned, we do not find that specific reference has been made to this witness. It is not suggested to him that he had stated before the Police that Samu Gope had inflicted Farsa blow on the head of deceased Sunil Gope. Besides the above, to make the situation clear, the counsel appearing for the defence in court below did not draw attention of this witness to his earlier statement given in the shape of fardbayan. 8. We have gone through the fardbayan and we find that the informant has clearly stated that it was Damu Gope who caused injury on the head of deceased Sunil Gope by means of sword. When Anil intervened, he was also subjected to assault by means of sword by appellant Damu Gope. When informant intervened, he was subjected to assault by coaccused Samu Gope by means of Farsa. Therefore, we find that statement of informant is consistent and he has not deviated in his deposition in Court from his earlier statement recorded in the fardbayan. The remaining witnesses i.e. P.Ws. 2, 7 and 8 are also consistent on the point that it was Damu Gope who inflicted sword blow on the head of Sunil. 9. Considering the evidence pointed out above, we do not find any merit in the appeal preferred by appellant Damu Gope vide Criminal Appeal (DB) No. 164 of 2004 and we do not agree with the submission that due to nonexamination of the investigating officer any prejudice has been caused to this appellant and that is fatal to the prosecution. In the result, Criminal Appeal (DB) No. 164 of 2004 stands dismissed. 10. We have discussed above the evidence brought on record that the dispute arose on account of cutting

the tree into pieces. We do not find that all the witnesses have consistently supported this fact that Amir Gope and Ratan Gope brought out weapon from the house and handed it over to the assailants. We further find that house of these appellants Amir Gope and Ratan Gope are situated in another tola. To verify contradictions referred to P.W.1 and that too in absence of examination of Investigating Officer, we have been compelled to verify 9 Criminal Appeal (DB) No. 164 of 2004 WITH Criminal Appeal (DB) No. 128 of 2004 WITH Criminal Appeal (DB) No. 177 of 2004 the statement of P.W.1 recorded under Section 161 Cr.P.C. and we find that he has not stated before the Police that appellant Amir Gope and Ratan Gope brought out weapon and handed over to the assailants. P.W.2 is also an eye witness but he did not support this fact that weapon of the offence were brought by Amir Gope and Ratan Gope. Considering all these aspects of the matter and evidence available on record, we do not agree with the findings of the Trial Court that appellants namely Prema Devi, Amir Gope and Ratan Gope are liable to be convicted for the offences punishable under Section 302 or 307 of the Indian Penal Code with the help of Section 34 IPC and, therefore, impugned Judgment of conviction and sentence dated 29.11.2003 recorded against these appellants in connection with Sessions Trial No. 337/1993, passed by the Additional Sessions Judge, F.T.C. No. IV, Dhanbad, (in G.R. Case No. 4977/1992 arising out of Govindpur P.S. Case No. 326/1992) is hereby set aside and Criminal Appeal (DB) No. 128 of 2004 and Criminal Appeal (DB) No. 177 of 2004 are allowed. The appellants in Criminal Appeal (DB) No. 128 of 2004 and Criminal Appeal (DB) No. 177 of 2004 are on bail and they are discharged from the liabilities of their bail bonds. (D. N. Upadhyay,J) (Ratnaker Bhengra, J) Dated the April 27, 2016 Jharkhand High Court, Ranchi RC /A.F.R.

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