

## Dasrath Gond And Ors. vs State Of Orissa on 15 March, 1955

**Equivalent citations: AIR1955SC583, 1955CRILJ1297, AIR 1955 SUPREME COURT 583**

### JUDGMENT

Jagannadhadas , J .

1. This appeal has been admitted only on the question of sentence. The relevant facts can be gathered from the following extract from the judgment of the High Court:

"The twelve appellants and seven other persons were placed on trial before the learned Sessions Judge for an offence under Section 302/149, I. P. C. on the allegation that on 25-2-1952 they, in furtherance of their common object, murdered one Madan Sahu of their village. The motive for the murder was said to be their belief that Madan Sahu was a Pungnia (sorcerer) who was mainly responsible for the prevalence of small pox in the village. The parties belong to village Badimal P.S. Brajarajnagar, in an interior part of Sambalpur district.

It appears that in the early part of the year 1952 small pox epidemic was prevalent in a virulent form in the village and the efforts of the villagers to drive away the epidemic with the help of Bejis (charmers) proved fruitless. The Bejis then informed the villagers that their Mantras were all rendered ineffective because one of the villagers was himself a Pungnia and was counteracting the effect of their Mantras. Thereupon the villagers grew alarmed and on 16-1-52 met in a body and executed a document (Ex. 8) agreeing to beat any one who was found to be a Pungnia.

The deceased, some of the appellants and the Gaontia of the village signed that document. Several other villagers also either signed it or gave their thumb impressions. As the epidemic showed no signs of abatement it was alleged that on 25-2-52 the appellants and some other villagers, suspecting that deceased Madan Sahu was the Pungnia, brought him to the Bhagbatghar of the village and asked him to take oath before the deity to the effect that he was not the Pungnia responsible for the small pox in the village.

Madan refused to take the oath first and there was an altercation between him and some of the appellants. He then tried to leave the Bhagbatghar but he was caught hold of by some of the appellants and severely belaboured with first blows and kicks. His son Lokanath Sahu (P. W. 4) and his widow Indumati Sahuani (P. W. 8) attempted to save him; but they were pushed out by some of the appellants.

It was alleged that after thus severely assaulting Madan in the Bhagbatghar itself the culprits carried him to the courtyard of appellant Chintamoni close by and continued to beat him there till he died. Then his corpse was taken away and thrown in a jungle close to the village."

2. The accused were all committed to take their trial before the Sessions Judge on charges under Sections 302/149/120B/201, I. P. C. Seven of the accused were acquitted. The remaining 12 were convicted under Sections 325/149 & 120, I.P.C. and acquitted in respect of Section 302/149 & Section 201 I. P. C. In respect of the convictions under Section 325/149, each was sentenced to three years' rigorous imprisonment and in respect of the convictions under Section 120, I. P. C, no separate sentences were awarded. These twelve went up in appeal to the High Court.

At the commencement of the hearing of the appeal a rule was issued by the High Court to show cause why the sentence against each should not be enhanced. Both the appeal and the motion for enhancement were finally argued together. The learned Judges of the High Court after discussing the merits of the case and considering the evidence and the probabilities confirmed the convictions in respect of eleven persons and enhanced their sentences from three years' R. I. to seven years' R. I. for each.

One other person who was also an appellant was given the benefit of the doubt and acquitted. The High Court has also noted that it was reported that one out of the eleven was dead but that they were not sure about it. However that may be, only eight out of these eleven persons appear to have applied to this Court for special leave and they are the petitioners before us.

3. The judgment of the High Court shows that in enhancing the sentences the learned Judges were mainly influenced by their view of the facts that the offence committed by the appellants before them in fact constituted murder under Section 302 I. P. C. and not merely grievous hurt under Section 325, I.P.C.

Whether this view is correct or not is not material since there has been no appeal by the Government against the acquittal and the High Court maintained the convictions only under Section 325/149, I. P. C. We agree entirely with the learned Judges of the High Court that, taking all the circumstances of the case into consideration, the sentence of three years' rigorous imprisonment awarded by the learned Sessions Judge was inadequate.

The post-mortem examination of the corpse of the deceased person showed that there were ten injuries all over the body as stated by the High Court in the following passage:

"The post-mortem examination on the corpse of Madan Sahu was held by Dr. S.C. Rout (P. W. 5) who found ten injuries all over the body. Some of the injuries were lacerated wounds on the left side and the right side of the head. There were contusion all over the face, neck, thorax and abdomen. The right leg from the knee downwards was broken at its middle. On dissection, the Medical Officer found the lower jaw fractured and several ribs Broken. The pleurae were also found torn at six places

below fractured ribs.

The right lung was also lacerated. All these injuries appeared to be ante-mortem and death was due to shock and haemorrhage resulting from the thoracic wounds caused by some hard substance or a blunt weapon like a lathi or by fist blows or kicks. Though a portion of the body had been eaten away by wild animals the Medical Officer's opinion regarding the ante-mortem nature of the injuries as described above was not challenged."

If it is clear that this was a brutal attack by several persons in a fit of superstition relating to suspected sorcery. The circumstances in which this attack was made calls for a deterrent sentence. We do not, therefore, feel called upon to interfere.

4. This appeal must accordingly be dismissed.