

Criminal Appeal (DB) No. 257 of 1995(P)

Against the judgment and order of conviction and sentence dated 31.07.1995 passed by Shri Pashan Xaxa, learned Sessions Judge, Sahibganj in Sessions Case No. 633 of 1993

1. Ram Murmu
2. Lakhan Murmu (since deceased)
Both sons of Chotka Murmu
3. Karoo Lal Hembram @ Kaloo Lal Hembram, son of late Ram Hembram

... Appellants

Versus

The State of Jharkhand

... Respondent

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellants : Mr. Abhijeet Kumar Singh, Advocate

For the Respondent : Mr. Vishwanath Roy, Special P.P.

Dated 06th May, 2024

Rongon Mukhopadhyay, J. : 1. Heard Mr. Abhijeet Kumar Singh, learned counsel for the appellants and Mr. Vishwanath Roy, learned Special P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 31.07.1995 passed by Shri Pashan Xaxa, learned Sessions Judge, Sahibganj in Sessions Case No. 833 of 1993, whereby and whereunder, the appellants have been convicted for the offence punishable u/s 302/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life.

3. The prosecution case arises out of the fardbeyan of Nepal Murmu (P.W. 1) to the effect that his sister Sona Murmu had recouped from her illness and in order to celebrate such occasion, she had sent her son Jagat Hembram to Machitha for the purposes of sacrificing a goat. She was going to her daughter's place at Simaljori so that she can also go for the Puja. On 28.03.1993, he was tilling his field at 6 a.m., when he saw his sister going to Simaljori. His sister was being followed by Ram Murmu and he had also seen Lakhan Murmu and Karoo Lal Hembram following her. He thereafter

resumed tilling the field when he heard a cry of alarm and he had seen Ram Murmu, Lakhan Murmu and Karoo Lal Hembraom assaulting his sister with Tengari and Bhala. Some other persons were also present whom he could not recognize. The informant out of fear managed to come back to his house and disclosed about the incident to his wife and sister-in-law. He thereafter along with other villagers rushed to the place of occurrence, where he saw his sister lying dead. The reason for the occurrence is that about 4-5 months back some villagers had called the deceased a witch and threatened her for which a case was lodged and these persons had to appear in Court.

Based on the aforesaid allegations, Borio P.S. Case No. 47/1993 was instituted for the offences punishable u/s 302/34 of the I.P.C. On conclusion of investigation charge-sheet was submitted against the accused persons. After cognizance was taken, the case was committed to the Court of Sessions where it was registered as Sessions Case No. 833 of 1993. Charge was framed against the accused persons for the offences punishable u/s 302/34 of the I.P.C. which was read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as fourteen (14) witnesses in support of its case.

P.W. 1 Nepal Murmu is the informant of the case who has stated that about a year ago his sister Sona Murmu was going to Simaljori. He was tilling his land, when he had seen Ram, Lakhan and Karoo Lal following his sister and they had committed the murder of his sister. There were some other persons with them whom he could not identify. On seeing the assault, he had fled away and informed his family and when they had returned to the place of occurrence, his sister was found dead with marks injury on her body. Her sister had recovered from illness and for that she had purchased a goat and was going to her daughter's place for inviting her. He has stated that there was a 107 Cr.P.C. proceeding between his sister and the accused and the accused used to threaten her by calling her a witch.

In cross examination he has deposed that he was at a distance of 150 yards from where his sister was. It was morning and he had seen the accused

persons coming out from the village. Manjhali Murmu had administered poison to his sister. He has deposed that all the villagers had committed the murder and for the said reason nobody came to her rescue. He has also deposed that Ramu had a Tangi though he does not know what weapons the others were using. He was at a distance and therefore, he could not see which accused had what arms in their possession.

P.W. 2 Sanjhali Hembram is the daughter of the deceased who has stated that Barka Murmu had disclosed to her about the murder of his mother and he had taken the name of Ram, Lakhan and Karoo as the persons committing the murder.

In cross examination she has deposed that Shampur is at quite a distance from the place of occurrence and there are lots of palm trees in between them apart from the fact that the land is undulating.

P.W. 3 Jagat Hembram has stated that his mother was going to the house of his sister where Barka Hembram had informed that his mother has been murdered. He had disclosed the name of Ram, Lakhan and Karoo as the perpetrators of murder who had committed assault with Lathi and Tangi. When he had gone to the place of occurrence, he had found several injuries on the person of his mother.

In cross examination he has deposed that there were no other persons who were tilling their land. The distance between the village and the place where his maternal uncle was tilling his field is one kilometer.

P.W. 4 Marangbai Baskey has stated that Nepal Murmu had disclosed that Ram Murmu, Lakhan and Karoo Lal had committed the murder of her mother-in-law by means of a Kulhari and sickle. The accused persons used to address her mother-in-law as a witch.

In cross examination she has deposed that the deceased was not her own mother-in-law. She had gone to the place of occurrence which is an undulating land with presence of bushes and palm trees. She had also deposed that the deceased was not on good terms with the villagers.

P.W. 5 Marangmai Baskey and P.W. 6 Sanjhali Murmu have been tendered by the prosecution.

P.W. 7 Chunnu Murmu has stated about the murder of his sister Sona Murmu committed by Ram Murmu, Lakhan and Karoo Lal. The murder was witnessed by his brother Nepal Murmu. The accused persons used to call his sister, a witch. At the time of the incident, he was also in the Bahiyar.

In cross examination he had deposed that the distance between the place of occurrence and the place where his brother was tilling the land was about 250 yards. He has stated that his sister was not on good terms with the villagers.

P.W. 8 Shambhu Hembram had received information from Nepal Murmu about the murder of his mother committed by Ram Murmu, Lakhan and Karoo Lal.

In cross examination he has deposed that his mother had instituted a proceeding u/s 107 Cr.P.C. upon the villagers. He lives separate from his mother because he was also not on good terms with his mother.

P.W. 9 Barka Hembram and P.W. 10 Suphal Hembram have been tendered by the prosecution.

P.W. 11 Jainul Abidi has identified the writing and signature of the Officer-in-Charge, Borio P.S. on the Fardbeyan which has been marked as Ext. 1.

P.W. 12 Budhrai Soren has put his thumb impression on the seizure list of blood stained earth.

In cross examination he has deposed that he is the Pradhan of the village. He has further stated that there was a dispute between Nepal Murmu and Karoo Lal Hansda over a Mahua tree.

P.W. 13 Chhotka Murmu has stated that he had not given his thumb impression over the seizure list prepared with respect to seizure of blood stained earth.

In cross examination he has deposed that his thumb impression was taken on a blank paper.

P.W. 14 Dr. S.P. Singh had on 29.03.1993 conducted postmortem on the body of the deceased Sona Murmu and had found the following injuries:

- (i) Sharp cutting injury 3" x 1" muscle deep right angle of lower lip.

- (ii) Lacerated wound right temporal region 2" x 1" x Bone deep with fracture of skull.
- (iii) Fracture of right temporomandibular joint & Left temporomandibular joint also.
- (iv) Sharp cutting injury 2 ½" x 1" skin deep on left cheek.
- (v) Lacerated wound 3" x 1" x skin deep on nape of neck.
- (vi) Sharp cutting injury 3" x 1/2" x skin deep on right cheek.
- (vii) Laceration & fracture of lower jaw (teeth not present Frontal).
- (viii) Two sharp cut injury 1" x 1/4" x skin deep & another 1½" x 1" x skin deep on right eye.

The cause of death has been opined to be on account of injury to the brain and other vital structures causing severe haemorrhage and shock. He has proved the postmortem report which has been marked as Ext.-2.

In cross examination he has deposed that such injury cannot be caused by Bhala.

5. The statements of the appellants were recorded under Section 313 Cr.P.C. in which they denied the accusation made against them.

6. The defence has examined as many as twelve (12) witnesses in support of its case.

D.W. 1 Chandan Murmu has stated that the place from where Nepal was tilling his land, it was not possible to see the place, where the dead body was lying. There was previous dispute between the informant and the accused over a Mahua tree and a toddy palm tree.

In cross examination he has deposed that the police had not recorded his statement.

D.W. 2 Chandu Soren has stated that from where Sona Murmu was lying dead, Shampur village was not visible. There was a previous dispute over a Mahua tree and a toddy palm tree between the informant and the accused.

In cross examination he has deposed that his statement was not recorded by the police.

D.W. 3 Bablu Marandi has stated that he went to the place of occurrence after he came to know about the murder. There was a previous dispute between Karoo and Nepal over a toddy palm tree.

In cross examination he has deposed that the incident had taken place in the Bahiyar.

D.W. 4 Bhuji Murmu has stated that there was a dispute between Nepal and Karoo.

In cross examination he has deposed that the police had not recorded his statement.

D.W. 5 Chatur Hembram has stated that there was no dispute between Sona Murmu and the accused, but it was between the informant and the accused.

In cross examination he has deposed that he was not questioned by the police.

D.W. 6 Kaloo Maraiya has stated that Shampur is at quite a distance from the place where Sona Murmu died and there is a jungle as well as undulating land in between.

In cross examination he has deposed that he had heard about the dispute with respect to Mahua tree and a toddy palm tree.

D.W. 7 Jetha Murmu's evidence is also similar to that of the other defence witnesses.

D.W. 8 Bara Baghrai Soren has stated that there was no dispute between the deceased and the accused.

D.W. 9 Ram Rai Tudu has stated that there are jungle from all sides at the place of occurrence. There was no dispute between the deceased

D.W. 10 Devi Lal Tudu has stated that there was no previous enmity between the informant and the accused.

D.W. 11 Sanjhala Soren has stated that he had witnessed the incident and Chuna, Nepal, Nagen and Shamu had assaulted Sona.

In cross examination he has deposed that his statement was not recorded by the police.

D.W. 12 Hopni Kisku has stated that there was a dispute between Karoo and the informant over a Manua Tree and a toddy palm tree. The deceased was not fed properly by the informant.

7. It has been submitted that by the learned counsel for the appellants that save and except P.W. 1, there are no eye witnesses to the occurrence and even the evidence of P.W. 1 is not reliable as the same suffers from various contradictions. It has been submitted that the appellants have been falsely implicated on account of previous enmity which would be apparent from the evidence of the defence witnesses.

8. Mr. Vishwanath Roy, learned Spl.PP has opposed this appeal by submitting that P.W. 1 has categorically stated about the appellants being armed and one of the accused persons had committed assault upon Sona Murmu leading to her death. The autopsy report as per the learned Spl. PP corroborates the manner of assault.

9. We have heard the rival submissions and have also perused the lower court records.

10. The genesis of the occurrence is that the informant (P.W. 1), witnessed the accused persons including the appellants following his sister and thereafter assaulting her with Tengari and Bhala, leading to her death. Admittedly, there are no other eye witnesses to the occurrence and only on the basis of the sole eye witness account of P.W. 1, the appellants have been convicted. The version of P.W. 1 seems to have been contradicted in his cross examination, wherein he has deposed that since he was at a distance, he could not figure out as to which accused had what arms in their possession. He has also stated that all the villagers had committed the assault, which resulted in none of the villagers coming to the rescue of Sona Murmu. The topography of the place where the assault had taken place has been described by P.W. 4, who has stated about the existence of bushes and palm trees and the land being undulating in nature. Some the defence witnesses have also stated that it was not possible for the informant to have seen the incident due to the distance and the topography of the land. The place of occurrence could have been proved had the Investigating Officer been examined, but his non-

examination has apparently prejudiced the defence. Reference has also been made by the defence witnesses regarding the previous enmity between the informant and one of the appellants Karoo Hembram over a Mahua tree and a toddy palm tree which fact gains credence from the evidence of the Pradhan of the village, who has been examined as P.W. 12. On an overall conspectus of the evidence of the prosecution and the defence, a doubt has been created regarding the authenticity of the P.W. 1 being an eye witness. There is not a single eye witness, apart from P.W. 1 who could enhance the quality of the evidence of P.W. 1. Conviction could have been based on the version of a solitary eye witness, if such evidence was unwavering, trustworthy and reliable, but as we have noticed above, the evidence of P.W. 1 suffers from infirmities and contradictions and in absence of any corroborative evidence, the role of the appellants in the commission of the murder gets extinguished.

We, therefore, on the basis of what we have stated above, hereby set aside the judgment and order of conviction and sentence dated 31.07.1995 passed by Shri Pashan Xaxa, learned Sessions Judge, Sahibganj in Sessions Case No. 833 of 1993. This appeal is allowed.

11. Since the appellants are on bail, they are discharged from the liability of their bail bonds.

(RONGON MUKHOPADHYAY,J.)

(DEEPAK ROSHAN, J.)

Jharkhand High Court, Ranchi
Dated the 06th May, 2024
MK/N.A.F.R.