

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Against the judgment of conviction dated 12.06.2003 and the order of sentence dated 16.06.2003 passed by the learned Additional Sessions Judge, Fast Track Court III, Deoghar in Sessions Case No. 221 of 1995/246 of 2002)

Criminal Appeal (D.B.) No.922 of 2003

1. Aghamu Hansda
2. Hari Hansda
3. Kartik Hansada @ K. Hansda
All sons of late Anup Hansda.
4. Kishore Hansda, son of Hari Hansda
5. Thakur Hansda, son of Kartik Hansda
All residents of village Pipara, Police Station Sarwan (Now Sonaraithan), District Deoghar ... Appellant(s).
Versus
The State of Jharkhand ... Respondent(s).
With

Criminal Appeal (D.B.) No.1206 of 2003

Suresh Hansda, son of Hari Hansda, resident of village Pipara, Police Station Sarwan (Now Sonaraithan), District Deoghar ... Appellant(s).
Versus
The State of Jharkhand ... Respondent(s).

PRESENT
SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.

For the Appellant(s) : Mr. B. M. Tripathi, Sr. Advocate
Mr. Lakhman Chand Roy, Advocate
For the Respondent(s) : Mr. Bhola Nath Ojha, Spl. PP

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JUDGMENT

09th December 2024

Per Ananda Sen, J.: I.A. No. 779 of 2003 in Cr.A. (DB) No.1206 of 2003

Since delay in preferring this appeal has already been condoned on 18.09.2003, I.A. No. 779 of 2003 stands disposed of, as I.A. No. 779 of 2003 has been wrongly reflected in the cause list as pending.

Cr.A.(D.B.) No. 922 of 2003 with Cr.A.(D.B.) No. 1206 of 2003

2. We have heard the learned senior counsel appearing for the appellants and the learned counsel for the State at length.
3. These Criminal Appeals arises out of the judgment of conviction dated 12.06.2003 and the order of sentence dated 16.06.2003 passed in Sessions Case No. 221 of 1995/246 of 2002 whereby and whereunder learned Additional Sessions Judge, Fast Track Court-III, Deoghar convicted the appellants under Sections 147, 148, 323 and 302/149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for the offence under Section 302/149 of Indian Penal Code only.
4. The learned senior counsel appearing on behalf of the appellants submits that there was an altercation in respect of invitation on the occasion of marriage ceremony when this assault had taken place and only one blow on the head of the deceased was given which would suggest that there was no intention on part of the appellants to commit murder of the deceased. There was no premeditation also on the part of these appellants to commit murder, therefore, all the appellants be acquitted.
5. The learned counsel for the State opposes the prayer and submits that there was land dispute between the parties and the assault is by axe on the head of the deceased which caused death. Therefore, both these appeals needs to be dismissed.
6. There was some land dispute between the father of the informant and their agnates since long. The relationship with them was not cordial. On the occasion of marriage ceremony of the son of Kartik Hansda (agnate of the informant), Kishore Hansda, son of Hari Hansda invited Bahadur Tudu, the brother-in-law of the informant. He stated that he had to come in the wedding feast at his house on 07.05.1995 with a threat that if he

does not attend the ceremony he will be taught a lesson. On this, hot exchange of words started between the brother-in-law of the informant and Kishore Hansda. Kishore Hansda went to his house and the informant also went to their house to take meal. Bahadur Tudu and brother-in-law of the informant were sitting in front of the door. After hearing some commotion when the informant and his brother came out, they saw Kartik Hansda, Hari Hansda, Aghnu, Suresh Hansda @ Gendo, Kishore Hansda and Thakur Hansda armed with stick and an axe, encircled Bahadur Tudu and assaulted him brutally. The informant and his brother rushed to save them when Suresh Hansda assaulted Bahadur Tudu on his head with an axe which caused injury. The injured fell down senseless. The accused person thereafter assaulted him with intention to kill. When informant Ramdeo Hansda tried to rescue Bahadur Tudu, Kartik Hansda and Hari Hansda assaulted Ramdeo Hansda with *lathi* causing injury. It is further alleged that Aghnu Hansda, Kishore Hansda and Thakur Hansda assaulted Mahanand Hansda with sticks. During course of treatment Bahadur Hansda died. On the aforesaid basis, FIR being Sonaraithari PS Case No. 29 of 1995 was instituted under Sections 147, 148, 342, 323, 324, 307 of the Indian Penal Code. Later on, Section 302 of the Indian Penal Code was added.

7. After investigation, the Investigating Officer submitted chargesheet against the appellants and the appellants were put on trial.

8. On the basis of chargesheet and materials available on record, cognizance was taken and the case was committed to Court of Sessions where charge was framed under Sections 302/34, 307, 148, 147 of the Indian Penal Code and trial proceeded.

9. To prove the prosecution case, altogether 13 witnesses were examined by the prosecution, who are as under:-

- i. PW1 :- *Ganesh Marandi*
- ii. PW2 :- *Devni Devi*
- iii. PW3 :- *Jagdish Hansda*
- iv. PW4 :- *Putilal Marandi*
- v. PW5 :- *Nunu Hansda*
- vi. PW6:- *Manager Kisku*
- vii. PW7:- *Manju Kumari*
- viii. PW8:- *Dr. N.C. Gandhi*
- ix. PW9:- *Mahanand Hansda*
- x. PW10:- *Tarni Hazra*
- xi. PW11:- *Ramdeo Hansda*
- xii. PW12:- *Vinod Kumar Gupta*
- xiii. PW13:- *Dr. Jitendra Kumar*

10. Following documents have been exhibited :

- i. Ext.1 – *Postmortem Report*
- ii. Ext. 2- *Signature of Tarni on the seizure list.*
- iii. Ext.2/1-*Signature of Ramdeo Hansda on the fardbeyan*
- iv. Ext.3 – *Seizure list*
- v. Ext.4 – *Formal FIR*
- vi. Ext.5 – *Endorsement in the fardbeyan*
- vii. Ext.6 to 6/1 – *Injury Reports.*

11. PW8 is Dr. N.C. Gandhi who conducted the postmortem on the dead body of Bahadur Tudu. He found one stitch wound on the left temporal side. On opening the stitch of the wound it was found that the wound was lacerated and blood stained. The left temporal bone was found fractured which is corresponding to the above injury. The doctor opined that the injuries might have been caused by hard and blunt substance and he also stated that there was only single blow and the death was caused due to shock and hemorrhage.

From his evidence, it is proved that only one blow was given on the temporal bone of the deceased. The blow was given by hard and blunt substance. Death was the result of the said blow thus it is clear that the death is homicidal.

12. PW13 is Dr. Jitendra Kumar who had examined Ramdeo Hansda and Mahanand Hansda. This doctor while examining Ramdeo Hansda found a lacerated wound over the occipital area of the head and found tenderness on the chest and head. As per him all the injuries were simple in nature and caused by hard and blunt substance like *lathi* and *danda*. In relation to Mahanand Hansda, he found lacerated wound on the head and he opined that the said may be caused by fall on the hard floor. From the statement of this doctor it is clear that the injured sustained injuries by hard and blunt substance and all the injuries are simple in nature.

13. PW12 is the Investigating Officer. He in his investigation stated that he had sent the injured persons to the hospital for treatment and he also visited the place of occurrence. As per him the place of occurrence is village road adjacent to the house of Ramdeo Hansda. He found blood stains on the earth and on the wall of the house of Ramdeo Hansda. He seized the blood stained earth and had prepared the seizure list. He proved the seizure list as Ext.3, formal FIR as Ext.4 and Endorsement Report as Ext. 5.

14. PW9 is Mahanand Hansda. He is an injured witness. He stated that the occurrence took place on 07.05.1995 at about 1:00 p.m. He was at home on that date. He heard screams from nearby ally. He went and saw Hari Hansda, Kartik Hansda, Thakur Hansda, Aghanu Hansda and Kishore Hansda assaulting Bahadur Tudu with *lathi* and axe. He went to rescue Bahadur Tudu when Thakur Hansda and Aghanu Hansda assaulted him with sticks. He also stated that Ramdeo Hansda went to rescue them but he was also assaulted with sticks by Kartik Hansda and Hari Hansda which caused head injury. He specifically stated that Suresh Hansda assaulted Bahadur Tudu with a stick on the

instigation of Aghanu Hansda. He admitted that there was land dispute between the parties and the relationship was not good. In cross examination he stated that when he came out of the house he saw Bahadur Tudu lying in the ally and his head was bleeding and when Bahadur Tudu was lying, the accused did not assaulted him.

15. Another witness is Ramdeo Hansda who is the informant of this case. Though he has proved the signature on the written report as Ext. 2/1 but he has not supported the prosecution case in his examination-in-chief so he was declared hostile. In cross examination he stated that his signature was taken in the blank paper.

PW1 Ganesh Marandi deposed that after hearing commotion when he came out of his house he saw Kartik Hansda, Hari Hansda, Aghanu Hansda, Suresh Hansda, Thakur Hansda and Kishore Handa were assaulting Bahadur Tudu in front of the door of Ramdeo Hansda. Suresh Hansda assaulted Bahadur Tudu with an axe on his head and the rest assaulted Bahadur with *lathi* and rod. When Bahadur fell down others also assaulted. This witness has stated that there was land dispute between the parties.

PW3 Jagdish Hansda also stated in the similar line as he had seen the assault. He also stated that Suresh Hansda assaulted Bahadur with an axe.

16. From the evidence of the main witnesses, we find that there is consistent evidence that Suresh Hansda assaulted Bahadur with an axe on his head on temporal region. None stated that whether Bahadur Tudu was assaulted with sharp side of the axe or blunt side. Since there is no oral evidence of the eye witnesses to that effect, we have to fall back to the evidence of the doctor who had conducted the postmortem. The doctor had

stated that the assault was one on the head of the deceased and it was by hard and blunt substance. This clearly suggests that the sharp side of the axe was not used. It has also come in the evidence that there was discord amongst both the family members and there was an altercation in respect of an invitation when this assault had taken place. The nature of the assault upon the deceased i.e. one blow on the head by hard and blunt substance would suggest that there was no intention on the part of Suresh Hansda and others to commit murder of the deceased. There was no premeditation on the part of these appellants.

17. So far as the other accused are concerned, there is consistent evidence that they had assaulted the witnesses and the deceased with sticks on several parts of the body. It is surprising that the doctor did not find any other injury on the part of the body of the deceased, rather he found only one injury on the head which can be attributed to Suresh Hansda. There were other injured who had been treated by PW13. Their injury is proved and the witnesses have also stated that they were also assaulted by the accused. From their medical report, we find that the injuries were simple in nature thus, rest of the appellants cannot be convicted under Section 302/149 of IPC.

18. Considering what we have held above, conviction of Suresh Hansda [appellant in Cr.A.(DB) No. 1206 of 2003] under Section 302 of the Indian Penal Code is converted to Section 304 Part II of the Indian Penal Code and he is sentenced to the period which he had already undergone. So far as other appellants are concerned [Cr.A.(DB) No. 922 of 2003] their conviction is converted to Section 323 of the Indian Penal Code and they are sentenced to the period which they have already undergone.

19. Thus, both these appeals stand dismissed with the aforesaid modification in the judgment of conviction dated

12.06.2003 and the order of sentence dated 16.06.2003 passed in Sessions Case No. 221 of 1995/246 of 2002.

20. The appellants are on bail. They are discharged of the liabilities of the bail bonds, so are the bailors.

21. Let a copy of the judgment along with the Trial Court Records be sent back to the Court concerned forthwith.

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

High Court of Jharkhand, Ranchi

Dated : 09/12/2024

Tanuj/

N.A.F.R.