

Criminal Appeal (DB) No. 48 of 1995(R)

Against the judgment and order of conviction and sentence dated 07.04.1995 (sentence passed on 10.04.1995) passed by Shri Balgovind Prasad, learned Additional Judicial Commissioner-III, Ranchi in Sessions Trial No. 346 of 1991.

1. Mangra Munda, S/o Sukhair Munda
2. Tukuna Munda, S/o Bandhan Munda
3. Jago Munda, S/o Paika Munda
4. Charkha Munda, S/o Gangu Munda
5. Jogi Munda, S/o Chamra Munda
6. Sainika Munda, S/o Thutha Munda
7. Johan Munda, S/o Sakka Munda

All residents of Vill-Danikira, P.S. Lapung, Dist.- Ranchi

... Appellants

Versus

The State of Bihar (now Jharkhand)

... Respondent

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellants : Mr. Arpan Mishra, Amicus Curiae

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

Dated 10th June, 2024

Rongon Mukhopadhyay, J. : 1. Heard Mr. Arpan Mishra, learned amicus curiae for the appellant and Mr. Vishwanath Roy, learned Special P.P.

2. This appeal is directed against the judgment and order of conviction and sentence dated 07.04.1995 (sentence passed on 10.04.1995) passed by Shri Balgovind Prasad, learned Additional Judicial Commissioner-III in S.T. No. 346 of 1991, whereby and whereunder, the appellants have been convicted for the offence punishable u/s 302/149 of the Indian Penal Code and have been sentenced to undergo imprisonment for life.

3. During the pendency of this appeal, appellant no. 3 Budhua Munda, appellant no. 5 Lotha Munda, appellant no. 6 Loknath Lohar, appellant no. 7 Sukhu Munda, appellant no. 8 Hauwa Munda and appellant no. 11 Binod Barla have died and accordingly this appeal has abated so far as those

appellants are concerned. This appeal is therefore restricted to appellant no. 1 Mangra Munda, appellant No. 2 Tukkuna Munda, appellant no. 4 Jago Munda, appellant no. 9 Charkha Munda, appellant no. 10 Jogi Munda, appellant no. 12 Sainika Munda and appellant no. 13 Johan Munda and their names accordingly find place in the cause title of this judgment.

4. The prosecution case arises out of the fardbeyan of Debra Munda recorded on 09.07.1990 to the effect that on 08.07.1990 at about 07:00PM, his sister Somari Orain after having a dinner was taking rest and humming a song and on hearing this, the accused persons, who were thirteen in number came variously armed with lathi and danda and dragged his sister out by alleging that she practices witchcraft and started assaulting her and by giving threats placed his sister in front of the door. The informant out of fear did not come out and in the morning when he opened the door, he found his sister lying dead in front of the door.

Based on the aforesaid allegations, Lapung P.S. Case No. 38/90 was instituted against thirteen named accused persons for the offences punishable under Section 302/34/148 IPC. On completion of investigation, charge sheet was submitted and after cognizance was taken, the case was committed to the Court of Sessions where it was registered as S.T. No. 346 of 1991. Charge was framed under Section 302/34 IPC and Section 302/148 IPC which was read over and explained to the accused in Hindi, to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as eight (08) witnesses in support of its case.

P.W.1 Chandra Mohan Munda has stated that the incident is of two and half years back at 07:00PM when he was in his house and the accused persons armed with lathi and danda had come and dragged his aunt Somari Mundain outside the house and assaulted her. Thereafter, the accused persons laid her in front of the door. His aunt died because of the assault. About one month prior to the incident, a meeting had taken place in the

village in which Somari was branded a witch and she was fined Rs. 3,000/- and the villagers had decided that if the fine amount is not deposited, she will be externed from the village.

In cross-examination he has deposed that when the accused persons had come to his house, he was in his room and an earthen lamp was burning. On hearing the commotion, he felt frightened but he had not closed the door of his room. He has deposed that two persons had entered the room of Somari and after she was dragged out, the other persons started assaulting her with lathi and danda. Somari was assaulted by the accused persons for one hour in the courtyard. He and the others had objected to the assault but had not raised any alarm. In the morning, he had seen the dead body of his aunt. The whole night he had a discussion with his parents. Due to the threat by the accused persons, all the inmates had closed the door of their respective rooms. He has deposed that there is a dispute between his father and the villagers over 12 acres of land and the villagers have not allowed his father to carry on farming in the said land.

P.W.2 Jawahar Soni did not support the case of the prosecution and has been declared hostile by the prosecution.

P.W.3 Tuma Karketta has stated that on the date of occurrence, he was going to the house of Debra Munda where he stayed the whole night. At about 07:00PM, the accused persons had dragged out Somari Mundain towards the courtyard where she was assaulted with lathi and danda and she died. When he had approached the accused not to commit such assault, he was also subjected to assault.

In cross-examination he has deposed that Police had not recorded his statement. Even after hearing the commotion, no one had closed the door. All the thirteen accused persons had committed assault upon Somari. He has further deposed that at the time of the assault he remained inside the house with Debra Munda.

P.W.4 Jhingi Mundain has stated that after feeding the children, she was washing the utensils when thirteen accused persons entered into the

house and dragged Somari towards the courtyard where she was assaulted with lathi and danda and after committing the assault, she was laid in front of the door. After issuing a threat, the accused persons had fled away.

In cross-examination she has deposed that none of the neighbors were called and even the Chowkidar was also not called. She, her husband and her son were watching the assault. Somari was assaulted innumerable times by the accused persons.

P.W.5 Dr. Chandrashekhar Prasad was posted as a Medical Officer in the Dept. of Forensic Medicine at R.M.C.H, Ranchi and on 10.07.1990, he had conducted autopsy on the dead body of Somari Oraoin and had found the following injuries:

- (i) Abrasions- 1.½ cm x 1cm, 1cm x ½ cm, ¼ cm x ¼ cm on the left thigh lateral side.
- (ii) Bruises- 4cm x 2cm on the left iliac crest.
- (iii) Internal wounds:- There is diffused contusion of left front. Perito temporal scalp and presence of sub-dural blood and blood clots over left hemisphere of brain. There is contusion and laceration of the left temporal lobe of brain. The stomach contained bilious fluid 50 cc. Urinary bladder empty. Uterus normal and non-pregnant. Heart contains title blood and internal organs slightly pale.

The cause of death was opined to be due to head injuries. The injuries were ante-mortem in nature caused by hard and blunt substance such as lathi and danda. He has proved the post-mortem report which has been marked as Ext.-1.

In cross-examination he has deposed that abrasion can be caused by fall. No fracture or dislocation of bone was found. The head injury found is possible due to dash against rough and hard substance. Injuries found on the person of the deceased must have been caused in a short duration.

P.W.6 Madhi Uraon has stated that he had come to know about the occurrence on the next day.

P.W.7 Debra Munda is the informant who has stated that the incident is of 08.07.1990 at 07:00PM when he was in his house and along with him were his wife, children and sister Somari Mundain when at about 07:00PM, the accused persons had entered into the room and dragged Somari Mundain outside the house and assaulted her with fists and slaps as well as with lathi and danda. The assault resulted in the death of Somari Mundain. At the time of the incident, he was standing near the door and he had witnessed the entire occurrence. The accused persons had kept the dead body of Somari in the veranda of the house. He out of fear, went inside and in the morning, when he woke up, he found the dead body of Somari lying on the veranda. He had gone to Police Station where his fardbeyan was recorded.

In cross-examination he has deposed that the accused persons had come to his house by creating a commotion. The accused persons had assaulted Somari in the courtyard for half an hour. On the date of the incident, he and his wife were in a room while his son was in another room. He has deposed that several persons reside in and around his house. At the time when the dead body of Somari was laid by the accused persons, the door of his house was closed.

P.W.8 Gauri Shankar Singh has proved the fardbeyan, formal FIR and inquest report which have been marked as Ext.-2, Ext.-3 and Ext.-4 respectively. The investigation was started by K.B. Keyem and he had taken over the investigation on 10.07.1990. He had inspected the place of occurrence and had recorded the statement of Chandra Mohan Munda, Jawahar Soni, Ram Soni and Sarjug Singh. He had obtained the post-mortem report and on completion of investigation, had submitted charge sheet. Jawahar Ram had stated before him that at 07:00PM, he had seen the accused persons entering into the house of informant with lathi and danda and dragging out the sister of the informant by calling her a witch and thereafter committing assault upon her resulting in her death. He had also stated that after committing the murder, the dead body was kept in the veranda of the house of the informant. He has proved the handwriting of K.B. Keyem in para 1 to 20 of the case diary which has been marked as Ext.-5.

In cross-examination he has deposed that he had recorded the statement of Chandra Mohan Munda at Rugu Toli. He had not recorded the statement of any witness at village Danikira as all the male members of the village had fled away.

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

6. It has been submitted by Mr. Arpan Mishra, learned amicus curiae appearing for the appellants that though the prosecution has projected P.W.1, P.W.3, P.W.4 and P.W.7 as the eye witnesses but their evidence suggests that they had not witnessed the occurrence. Learned counsel has submitted that not a single independent witness has been examined by the prosecution, though several persons reside besides the house of the informant. The accused persons have been implicated on account of a land dispute. He has further submitted that the injury sustained by the deceased as alleged does not co-relate with the findings of the post mortem report.

7. Mr. Vishwanath Roy, learned Spl. P.P. has stated that the incident took place in the evening and all the eye witnesses had seen the occurrence which took place in the courtyard of the house. There are no material contradictions in their evidence. So far as non-examination of independent witnesses are concerned, as per P.W.8, all the male members had fled the village due to fear and therefore, they could not be examined. The evidence of P.W.1, P.W.3, P.W.4 and P.W.7 evince confidence and therefore the learned trial court had rightly convicted the appellants for the offence under Section 302/149 I.P.C.

8. We have heard the learned counsel for the respective sides and have also perused the lower court records.

9. The accused/appellants are alleged to have entered into the house of the informant in the evening having lathi and danda in their possession and by dragging out Somari Mundain, the sister of the informant into the courtyard had committed an indiscriminate assault upon her which resulted in her death and thereafter the body was laid near the front door. The door was opened by the informant in the morning and he had found his sister lying dead.

11. P.W.1, P.W.4 and P.W.7 claim themselves to be the eye witnesses being the inmates of the house where the assault had taken place. Apart from them, P.W.2 and P.W.3 have been examined as independent witnesses. So far as P.W.2 is concerned, the evidence of the Investigating Officer (P.W.8) reveals about the statement of P.W.2 indicating that he was an eye witness to the occurrence but in his evidence, P.W.2 has not supported the prosecution case and he was declared hostile by the prosecution. P.W.3 Tuma Karketta also claims himself to be an eye witness as he had come to visit the informant and had stayed the whole night in the house of the informant. However, P.W.1, P.W.4 and P.W.7 have not stated about the presence of P.W.3 in the house when the incident had taken place, though P.W.7 has made a fleeting reference that P.W.2, out of fear, had fled away. The statement of P.W.2 was not recorded by the Police as could be deciphered from the evidence of P.W.8. Therefore, the evidence of P.W.2 and P.W.3 is not of much assistance to the prosecution.

12. The evidence of P.W.1, P.W.4 and P.W.7 are of utmost significance as they claim to have vividly seen the incident of assault. P.W.1 was in his room when he had lighted an earthen lamp and his father was in another room. Nobody had raised an alarm, and in the morning, the dead body of his aunt was found lying in the door step. The cross-examination of P.W.4 reveals that she and her husband (P.W.7) and son (P.W.1) were watching the assault after coming outside, wherein lathi and danda blows rained upon the deceased. P.W.7 has also stated about watching the assault from the door step and when the dead body was kept by the accused in the veranda, he out of fear, went inside the room and in the morning saw the dead body lying in the veranda.

In cross-examination P.W.7 has deposed that when the accused persons had started assaulting his sister, he out of fear went inside the house.

13. What appears to be striking feature in the evidence of P.W.1, P.W.4 and P.W.7 is the conduct of these witnesses. As per P.W.7, his house was surrounded by other houses and the accused persons, while coming to his house, had created a commotion but surprisingly none of the neighbors had

come or made attempts to prevent the incident. These witnesses also did not raise any alarm and did not try to persuade the marauders not to commit the assault. As per P.W.8, all the males of village Danikira had fled away due to fear but no attempt was ever made by P.W.8 to examine any other witness. As per the evidence of P.W.1, P.W.4 and P.W.7, the assault continued for a duration of thirty minutes to one hour and P.W.4 and P.W.7 had watched the assault from the door step as if they were watching a drama unfold. Even after the assailants left, no attempt was made by P.W.7 to inform the neighbors or the Police and instead he stayed the whole night in his house and in the morning, he had found the dead body of his sister lying near the door step. Moreover, the incident appears to have taken place in between 07:00-08:00PM in the month of July which was not late night inviting a plausible explanation from the informant about not coming outside after the assailants had left. The eye witnesses have stated about identifying each of the thirteen accused persons but the prosecution has failed to show as to whether there was any source of light available for such vivid identification and description of the accused. Only P.W.1 has stated about the presence of a Dhibri and that too in his study room. The other feature of the case is a dispute between the informant and the villagers over 12 acres of land which the villagers have prevented the informant from farming. This evidence of P.W.1 seems to reveal an attrition between the informant and villagers and this could be a plausible reason for implicating the accused persons. So many questions lie unanswered by the prosecution and no clear-cut inference can be drawn about the participation of the accused in the assault upon Somari Mundain. The post mortem report speaks of an abrasion and a bruise and an injury on the head which proved fatal. This belies the indiscriminate and brutal assault committed by the accused persons with lathi, danda and fists and slaps as projected by P.W.1, P.W.4 and P.W.7. The entire scenario noted above, creates a grave doubt over the eye witness account of P.W.1, P.W.4 and P.W.7 and their evidence cannot be relied upon to secure the conviction of the appellants.

14. Thus, in view of the findings recorded by us, we hereby set aside the judgment and order of conviction and sentence dated 07.04.1995 (sentence passed on 10.04.1995) passed by Shri Balgovind Prasad, learned Additional Judicial Commissioner-III, Ranchi in S.T. No. 346 of 1991.

15. This appeal is allowed.

16. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(RONGON MUKHOPADHYAY, J.)

(DEEPAK ROSHAN, J.)

Jharkhand High Court, Ranchi

Dated the 10th June, 2024

Preet/N.A.F.R.