

Criminal Appeal (DB) No. 293 of 1998 (R)

[Against the judgment and order of conviction and sentence dated 07.09.1998 (sentence passed on 11.09.1998) passed by Sri Raj Narain Prasad Singh, learned 1st Addl. Sessions Judge, Dhanbad in connection with Sessions Trial No. 287 of 1989]

1. Lakhiram Murmu, S/o Late Matal Murmu,
2. Sukhlal Murmu, S/o Matala Murmu
Both resident of Village Aasna, Tola- Lipidih, P.S.
Govindpur, District- Dhanbad. **Appellants**

Versus

The State of Bihar (Now Jharkhand) **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellants : Mr. M.B. Lal, Advocate
For the Respondent : Mrs. Nehala Sharmin, Spl. P.P.

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C.A.V. on 15/10/2024

Pronounced on 08/04/2025

Per Rongon Mukhopadhyay, J.

Heard Mr. M.B. Lal, learned counsel for the appellants and Mrs. Nehala Sharmin, learned Spl. P.P. for the State.

2. This appeal is directed against the judgment and order of conviction and sentence dated 07.09.1998 (sentence passed on 11.09.1998) passed by Sri Raj Narain Prasad Singh, learned 1st Addl. Sessions Judge, Dhanbad in Sessions Trial No. 287 of 1989, whereby and whereunder, the appellants have been convicted for the offence punishable u/s 302/34 of the IPC and have been sentenced to imprisonment for life.

3. The prosecution case arises out of the fardbeyan of Vinod Murmu, in which, it has been stated that on 12.04.1989 at about 11:00 A.M. the father of the informant namely, Chunku Murmu had cut a *Bair* tree in his kitchen garden and as he was trying to take it to his house Lakhiram Murmu and Sukhlal Murmu came and Lakhiram Murmu claiming that the tree belonged to him wanted to take it away with the help of Sukhlal Murmu. When the father of the

informant objected Lakhiram got enraged and started assaulting him with a lathi and Sukhlal Murmu also assaulted him with a lathi. It has been alleged that in course of such assault Lakhiram snatched the tangi from the father of the informant and gave him a tangi blow on the back of his head as a result of which he fell down unconscious. Both the accused thereafter fled away. The incident of assault was witnessed by Rasik Murmu, Nimai Murmu and the mother of the informant.

Based on the aforesaid allegations Govindpur P.S. Case No. 76/1989 was instituted u/s 302 of the 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 Sessions Trial No. 287 of 1989. Charge was framed against the accused u/s 302/34 of the IPC 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 six witnesses in support of its case.

5. P.W.1 (Sukarmani Manjhian) is the wife of the deceased who has stated that about three years back at around 11:00 A.M. her husband had gone to the kitchen garden to cut a tree. After cutting the tree he was bringing it home when Lakhiram Murmu and Sukhlal Murmu stopped him by saying that the cut tree belongs to them. When her husband replied that if the villagers decide they can take the tree, the accused persons retorted by giving lathi blows upon her husband. She has stated that her husband had a tangi which was snatched by Lakhiram Murmu who gave a blow on the head of her husband who died due to such assault. The Police had recorded her statement.

In cross-examination, she has deposed that she was in the courtyard of her house when the accused persons

had come and committed assault upon her husband. When her husband had fallen down unconscious due to lathi blow he was struck with a tangi on head 4-5 times. When she raised an alarm, nobody had come. After committing the assault, the accused persons had fled away. Her son Vinod Murmu and nephew Nimai Murmu had put her husband in a cot. The Police had only seized the blood-stained earth and not the tangi and the tree.

6. P.W.2 (Nimai Murmu) has stated that Chunku Murmu had cut a bair tree in his kitchen garden but Sukhlal Murmu and Lakhiram Murmu had prevented him from taking away the tree and both had assaulted Chunku Murmu with lathis. Lakhiram Murmu had snatched the tangi from the possession of Chunku Murmu and assaulted Chunku Murmu with the tangi on his head. He has stated that the Police had recorded his statement.

In cross-examination, he has deposed that on hearing the cry of alarm he went to the place of occurrence and found Chunku Murmu in an injured condition with blood oozing out from his head. There were no other persons present. He had called the wife and son of Chunku Murmu while disclosing that Chunku Murmu has died.

7. P.W.3 (Vinod Murmu) is the informant and son of the deceased who has stated that his father had cut a bair tree at which Lakhiram Murmu and Sukhlal Murmu objected and wanted to take away the tree with them. When his father advised them to settle the issue in the Panchayat both the accused started assaulting his father with lathis at which his father fell down and thereafter Lakhiram snatched the tangi from his father and assaulted his father with the sharp portion of the tangi and his father died at the spot itself. At the time of the assault his mother, Rasik Murmu and an old woman were

present at the place of occurrence. He does not remember the name of the old woman. He has stated that Rasik Murmu has died.

In cross-examination, he has deposed that he had rushed to the place of occurrence on hearing a commotion and had seen the dead body of his father with both the accused persons present. His mother had reached the place of occurrence after him.

8. P.W.4 (Somani Manjhian) was tendered by the prosecution.

9. P.W.5 (Baban Singh) was posted at Govindpur P.S. and he had investigated Govindpur P.S. Case No. 76/1989. He has proved the formal FIR which has been marked as Exhibit-1. He had inspected the place of occurrence which is the parti land of the informant. He has proved the inquest report which has been marked as Exhibit-2. He had recorded the statements of Bimal Murmu, Sukarmani Manjhian, Nimai Murmu, Rasik Murmu and Somani Manjhian. He had received the postmortem report and after completion of investigation had submitted charge-sheet.

In cross-examination, he has deposed that he had not seized the cut tree. In the courtyard he did not find lathis or tangi.

10. P.W.6 (Dr. D.K. Dhiraj) was posted as a Tutor of Forensic Medicine in P.M.C.H. Dhanbad and on 13.04.1989 he had conducted autopsy on the dead body of Chunku Murmu and had found the following:

- (i) Swelling 5" x 4" over right temporal, parietal occipital area with ecchymosis of scalp underneath.*
- (ii) Lacerated wound 1" x ¼" upto bone 3/2" above medial end of left eyebrow.*
- (iii) Abrasion 1 ½" x 1" and 2" x ¾" on left deltoid area. The arm bone showed close fracture in the middle part.*

(iv) *Abrasion 3" x 1" on middle and outer part of right arm associated with contusion 3" x 2".*

On dissection blood clots were seen under right occipital parietal area 5" x 4" x 1/10". Thin subdural ecchymosis was seen all over parietal frontal, occipital and temporal areas. Left sixth to 11th ribs were found fractured near the vertebral end. Left lung was lacerated and collapsed. Approximately 150 c.c. fluid blood was found inside the left chest cavity. Spleen was found torn in two pieces. Approximately 600 c.c. fluid blood and clots were present inside abdominal cavity. Stomach and urinary bladder were empty. Both sides of the heart were also empty.

The cause of death was opined to be from combined effects of shock, coma and asphyxia due to the aforementioned hard and blunt force injuries. The postmortem report has been proved and marked as Exhibit-3.

11. The statements of the accused were recorded u/s 313 Cr.P.C., in which, they have denied their complicity in the murder of Chunku Murmu.

12. It has been submitted by Mr. M.B. Lal, learned counsel for the appellants that there are no eyewitnesses to the occurrence. He has submitted that even the informant (P.W.3) had arrived at the place of occurrence after the assault had already taken place. In fact, the evidence of P.W.2 reveals that when P.W.2 had arrived at the scene of crime there were no persons present and it was he who had informed the wife and son of the deceased about the murder of Chunku Murmu.

13. Mrs. Nehala Sharmin, learned Spl. P.P. for the State has submitted that P.W.1 and P.W.3 are the eyewitnesses to the occurrence and the postmortem report corroborates the manner of assault as depicted by the eyewitnesses.

14. We have heard the learned counsel for the respective parties and have also perused the Trial Court Records.

15. The fardbeyan of Vinod Murmu (P.W.3) would suggest that he was an eyewitness to the incident of assault committed by the appellants on the trivial issue of ownership over a cut bair tree and his mother Sukarmani Manjhian, Rasik Murmu and Nimai Murmu had also witnessed the assault committed upon Chunku Murmu. As per P.W.3, Rasik Murmu had died during the pendency of the trial. So far as Nimai Murmu (P.W.2) is concerned, he in his cross-examination has categorically stated that when he arrived at the place of occurrence there were no one present and it was he who had informed the wife and son of the deceased about the murder. The evidence of P.W.2 contradicts the evidence of Sukarmani Manjhian (P.W.1) who has claimed to have witnessed the incident of assault. The evidence of P.W.1 is further diluted by the evidence of P.W.3 who has stated that when he had reached the place of occurrence his father was already lying dead and P.W.1 had reached the place of occurrence after him. In fact, from the evidence of P.W.3 an inference can be drawn about the truthfulness of the evidence of P.W.2 regarding P.W.2 informing the son and mother of the deceased about the murder. The evidence of P.W.1 and P.W.3 regarding the manner of assault seems to be contrary to the findings recorded in the postmortem report. As per P.W.1 and P.W.3 the deceased was assaulted on his head with the sharp end of the tangi but the injury suffered by the deceased has been opined to be by hard and blunt substance. In no circumstance, therefore, it can be said that it was the appellants who had committed the assault upon Chaunku Murmu on account of the clear dearth in the evidence put forward by the prosecution. The learned trial court has not embarked on an in-depth analysis of the evidence on record while erroneously recording a finding of guilt against the appellants.

16. We, therefore, on the basis of the discussions made hereinabove set aside the judgment and order of conviction and sentence dated 07.09.1998 (sentence passed on 11.09.1998) passed by Sri Raj Narain Prasad Singh, learned 1st Addl. Sessions Judge, Dhanbad in Sessions Trial No. 287 of 1989.

17. This appeal is allowed.

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

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand at Ranchi

Dated, the 8th day of April, 2025.

A. Sanga /-