

ORISSA HIGH COURT CUTTACK

CRIMINAL APPEAL NO.1 OF 1990

From the judgment dated 22.12.1989 passed by Sri R.K. Mohanty,
Sessions Judge, Keonjhar in S.T. Case No.26 of 1988.

Dasaratha Dehury & others Appellants

Versus

State of Orissa Respondent

For appellants : M/s D.Nayak, D.P. Dhal
and P.Rout A.K.Nanda.

For respondent : Mr. S. Das,
Addl. Government Advocate

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 01.07.2009

PRADIP MOHANTY, J. This criminal appeal is directed against the judgment of conviction and order of sentence dated 22.12.1989 passed by the learned Sessions Judge, Keonjhar in S.T. Case No.26 of 1988.

2. The case of the prosecution is that on 01.10.1987 at about 8.30 A.M. while the informant (P.W.1) was going to a cloth shop at

Ghashipura in the district of Keonjhar, in front of the house of accused Ghana Dehury the accused persons holding lathis came towards the informant from to the compound of accused Ghana Dehury and assaulted him by lathis causing bleeding injury. The accused persons also assaulted Duryodhan Sahu (P.W.2), Ananda Sahu (P.W.3), Kesab Chandra Sahu (P.W.4), Rabindra Prusty (P.W.5), Jagabandhu Sahu (P.W.6), Madhusudan Sahu (P.W.7) by lathis and stones. Accused Dasaratha Dehury and Balaram Dehury assaulted on the head of deceased Nabaghan Sahu by lathis. Other accused persons also assaulted him. The deceased Nabaghan Sahu succumbed to the injuries in S.C.B. Medical College, Cuttack on 06.10.1987. The matter was reported to the police pursuant to which investigation commenced, the injured persons were medically examined, postmortem was conducted on the dead body of the deceased and after completion of investigation charge-sheet was filed against the appellants .

3. The plea of the appellants is complete denial of the allegation. Their further plea is that the informant and his witnesses allowed their cattle to graze the crops of their (appellants') land and damaged their houses and pelted stones at them. Their further plea is that the appellants had enmity with the prosecution witnesses over cultivation of some Anabadi land. On the date of occurrence, some of the prosecution witnesses pelted stones at the appellants to which the appellants protested.

4. The prosecution, in order to prove its case, examined as many as 20 witnesses including the injured persons, the doctor and the I.O, and exhibited 44 documents. The appellants in support of their plea examined one witness and proved 8 documents.

5. The learned Sessions Judge, Keonjhar, who tried the case, by his judgment dated 22.12.1989 convicted accused Dasaratha Dehury (appellant no.1), Balaram Dehury (appellant no.4), Ghana Dehury (appellant no.10), Sridhar Dehury (appellant no.2), Mayadhar Dehury (appellant no.15), Rabindra Dehury (appellant no.11) and Laxmidhar Dehury (appellant no.7) under Sections 304 Part-II/148/149, IPC and sentenced them to undergo rigorous imprisonment for five years for the offence under Section 304 Part-II read with Section 149, IPC and rigorous imprisonment for one year for the offence under Section 148/149, IPC, the sentences are to run concurrently. He also convicted accused Sridhar Dehury (appellant no.2), Nabaghana Dehury (appellant no.13), Sarat Dehury (appellant no.14), Balaram Dehury (appellant no.4), Benudhar Dehury (appellant no.5), Rabindra Dehury (appellant no.11), Purna Dehury (appellant no.3), Dharanidhar Behera (appellant no.8), Prafulla Dehury (appellant no.6), Dasaratha Dehury (appellant no.1), Kuna Munda (appellant no.9) and Sama Munda (appellant no.12) under Sections 323/149, IPC and sentenced each of them to pay fine of Rs.200/- in default to undergo rigorous imprisonment for one month.

6. Mr. Tripathy, learned counsel appearing for the appellants submits that there is inimical relationship between the informant and the accused persons. Evidence of the eye witnesses is not clear and cogent. They developed the story from stage to stage. There are major contradictions in the evidence of the eye witnesses. All the witnesses are interested belonging to one group. Though there are 300 houses in the village belonging to different castes, not a single independent witness has been examined to support the prosecution case. No explanation whatsoever has been given for non-examination of such witnesses. Evidence of P.W.9 is very clear and cogent with regard to existence of 300 houses in the village. P.W.11, the doctor while conducting post-mortem examination found three external injuries. But P.W.13 who examined the deceased first found one external injury on the person of the deceased. Both the doctors opined that the injuries could be caused by hard and blunt weapon, such as lathi and thick pieces of stone. He further submits that though according to the eye witnesses a crowbar blow was given to the belly of the deceased, there is no corresponding external injury on the belly.

Mr. Das, learned Addl. Government Advocate, on the other hand, submits that P.Ws.1 to 9 are eye witnesses and their evidence is very clear and cogent with regard to the assault on the deceased and other injured persons. There is no material to disbelieve the evidence of the said eye witnesses. Accused persons by forming a group attacked

with common object, assaulted the deceased and the other injured persons. Evidence of P.W.11, the doctor, who conducted post-mortem examination and P.W.13, the doctor, who examined the injured persons corroborated the evidence of eye witnesses P.Ws.1 to 9. There is no infirmity in the prosecution evidence. Therefore, this Court should not interfere with the judgment of conviction passed by the trial court.

7. Perused the LCR. P.W.1, who is the informant and also an injured, has stated that 25 to 30 persons came towards him holding crow bars and lathis from the compound of accused Ghana Dehury. Accused Sridhar Dehury gave a lathi blow to his head causing bleeding injury. He fell down on the ground and sustained injuries on his right knee. In his cross-examination, he only stated that there was inimical relationship between the parties. Except this, nothing has been elicited from him through cross-examination and there is nothing on record to disbelieve his evidence. P.W.1 had lodged the F.I.R. marked as Ext.1. P.W.2 is an ocular witness. He stated that while returning home he saw the occurrence. He specifically stated that while Nabaghana Sahu was coming on that way accused Balaram Dehury assaulted Nabaghan Sahu by a lathi on his head and accused Dasaratha Dehury also assaulted on his head. Nabaghana Sahu fell down on the ground. Accused Ghana Dehury pressed his neck and accused Laxmidhar Dehury also gave a push by a lathi to him. He further stated that when he came nearer to Nabaghana Sahu (deceased), accused Nabaghana Dehury and Sarata

Dehury assaulted him on his right side head by lathis, and at that time one stone was pelted at him which struck his left eye. He fell down on the ground. In his cross-examination he stated that Nabaghana Sahu had no weapon in his hand for his protection and he had come alone to the place of occurrence. Nothing has been elicited through cross-examination to discredit his testimony. P.W.3, another witness to the occurrence, stated that accused persons obstructed Nabaghana Sahu while he was moving on a cycle. Accused Dasaratha Dehury and Balaram Dehury assaulted on the head of Nabaghana Sahu and accused Ghana Dehury pressed his neck. He further stated that accused Sridhar Dehury and Maya Dehury pressed Nabaghana Sahu. He also stated that accused Nabaghana Dehury and Sarat Dehury assaulted Duryodhan Sahu (P.W.2) by lathi on his head. He also corroborated the statement of P.W.2 with regard to assault to P.W.2 by a stone. He further stated that Nabaghana Sahu died 3 to 4 days after the occurrence in S.C.B. Medical College. Except inimical relationship, nothing has been elicited by way of cross-examination. P.W.4 is the brother of the deceased. He also corroborated the statement of P.W.3 and further stated that the accused Laxmidhar Dehury gave a push to the belly of the deceased by something. He also stated that while he was going to the hospital along with his brother, in front of the house of accused Ghana Dehury he was obstructed and threatened to be killed by Ghana Dehury. There is nothing to disbelieve the evidence of P.W.4. P.W.5 is another injured. He stated that while he

was going towards Jute field, accused Sridhar Dehury caught hold of his neck, accused Balaram Dehury and Benudhar Dehury assaulted him by lathi. P.W.6 is another injured and a seizure witness. He specifically stated that accused persons Ghana Dehury, Purna Dehury, Rabi Dehury, Benudhar Dehury, Sankaru Dehury, and Sridhar Dehury ran to him. Accused Rabi Dehury caught hold of his neck and Benudhar Dehury brought a stone and gave a blow on his head causing injury on his left side head. Accused Purna Dehury assaulted him by a stone on his left side head where the earlier assault had been inflicted. There is no material to disbelieve the evidence of P.Ws.5 and 6. P.W.7 is another injured who specifically stated that accused Ghana Dehury prevented him and accused Dharani Behera caught hold of his neck and pushed him. Accused Sridhar Dehury gave a blow on his right hand by a stone. Some minor contradictions are there in the evidence of this witness. P.W.8 is also an injured. He specifically stated in his examination in chief that accused Dasaratha Dehury caught hold of his neck from back side. Accused Prafulla Dehury assaulted on his head with a stone causing bleeding injury. He is also a witness to the seizure. There is nothing to discard the evidence of this witness. P.W.9, another injured witness, deposed that accused Kuna Munda caught hold of his neck and accused Sama Munda assaulted on his left leg by lathi while he was grazing the cattle. P.W.10 is the doctor who assisted Dr. Brahamananda Acharya at the time of treatment of the deceased. He deposed that the deceased died

on 06.10.1987 at 7.30 P.M. and proved Ext.4 series, the Bed Head tickets.

P.W.11 is the doctor who conducted autopsy over the dead-body of the deceased Nabaghana and found the following injuries :

External injuries

- (i) Small multiple abrasions of different sizes and shape are found on the deceased among these 2 on the middle of the sternum one on the medial aspect of right ankle, back of the left elbow, back side of the lower part of the left arm. Dry brown scabs found over the abrasion injuries;
- (ii) One surgical stitch wound of 10 Cm length having 8 black silk stitches was found extending vertically over the right parieto temporal area from the vertex to the root of right ear. The margins were clean cut;
- (iii) A newly formed linear scar with bit irregular margin of 5 Cm in length was found over the left fronto parietal region extending upwards and medially to mid line. Dried scabs and blood stains were attached to that area. Recently removed stitch impressions were detected along side;

Internal injuries

- Scalp: The inner aspect of the scalp showed contusion and haematoma over frontal parietal and temporal region of both the sides. It was more marked under the external injury No.(iii).
- Skull: Skull bone was found absent in an area of 6 cm x 5 cm on right temporo parietal region.
- Brain: Diffused subdural and subpial haematoma were found throughout mostly over the right hemisphere, contusion with laceration were found over right parieto temporal area with intra cerebral hemorrhage with clot on right hemisphere of the brain.

8. There is no dispute that the death was homicidal. The deceased was admitted to the SCB Medical College and succumbed to the injuries on 06.10.1987. There is nothing to disbelieve the evidence of the eye witnesses and the medical evidence. There is no major contradiction in the evidence of the prosecution witnesses. On the ground of interestedness, the Court cannot discard the evidence of the witnesses. Taking into consideration the facts and circumstances of the case as well as the materials and evidence available on record, the trial court has rightly recorded an order of conviction with which this Court finds no reason to interfere.

9. The occurrence took place in the year 1987 and in the meantime near about 22 years have elapsed. All the accused persons were in custody for a substantial period. This Court, therefore, thinks it proper to modify the sentence. Accordingly, accused Dasaratha Dehury (appellant no.1), Balaram Dehury (appellant no.4), Ghana Dehury (appellant no.10), Sridhar Dehury (appellant no.2), Mayadhar Dehury (appellant no.15), Rabindra Dehury (appellant no.11) and Laxmidhar Dehury (appellant no.7) instead of five years rigorous imprisonment for the offence under Section 304 Part-II read with Section 149, IPC are sentenced to the period of imprisonment already undergone and to pay a fine of Rs.10,000/- (ten thousand) each in default to undergo rigorous imprisonment for one year. Their sentence of one year rigorous imprisonment for the offence under Section 148/149, IPC is confirmed.

Out of the fine amount, if realized, Rs.50,000/- (fifty thousand) shall be paid to the widow of the deceased. The sentence of accused Sridhar Dehury (appellant no.2), Nabaghana Dehury (appellant no.13), Sarat Dehury (appellant no.14), Balaram Dehury (appellant no.4), Benudhar Dehury (appellant no.5), Rabindra Dehury (appellant no.11), Purna Dehury (appellant no.3), Dharanidhar Behera (appellant no.8), Prafulla Dehury (appellant no.6), Dasaratha Dehury (appellant no.1), Kuna Munda (appellant no.9) and Sama Munda (appellant no.12) under Sections 323/149, IPC is confirmed.

10. With the modification of sentence to the extent indicated, the appeal is dismissed.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
 July 1,2007/ **G.D.Samal**