

**Cr. Jail Appeal (D.B.) No 232 of 2009  
with  
Cr. Jail Appeal (D.B.) No 1330 of 2007**

Against the judgment of conviction and order of sentence dated 26.08.2003 and 27.08.2003, respectively, passed by the Additional Sessions Judge, F.T.C.II, Deoghar in connection with Sessions Case No. 237 of 2001.

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Guru Charan Rai. .... ... ...Appellant  
(in Cr. Jail Appeal (D.B.) No. 232/09)  
Sugia Devi. .... ... ...Appellant  
(in Cr. Jail Appeal (D.B.) No. 1330/07)

-Versus-

The State of Jharkhand. .... ... ...Respondent  
(in both the appeals)

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For the Appellant: Mr. Manoj Kumar Mishra, A.C.  
For the State: A.P.P

**P R E S E N T**

**THE HON'BLE MR. JUSTICE D.N.UPADHYAY  
THE HON'BLE MR. JUSTICE RATNAKER BHENGRA**

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**By Court** These criminal appeals have been preferred against the judgment of conviction and order of sentence dated 26.08.2003 and 27.08.2003, respectively passed by the learned Additional Sessions Judge, F.T.C II, Deoghar, in connection with Sessions Case No. 237 of 2001 corresponding to G.R. Case No. 95 of 2001 arising out of Jasidih P.S. Case No. 30 of 2001, whereby both the appellants have been held guilty for the offence punishable under Sections 302/34, 307/34 and 341 of the I.P.C. and sentenced to undergo R.I. for life and to pay fine of Rs. 5000/-, in default of making payment of fine, S.I. for a period of three months under Sections 302/34 of the I.P.C., simple imprisonment for one month under section 341 of the I.P.C, R.I. for 05 years under Section 307/34 of the I.P.C. It was directed that 60% of the fine amount if deposited shall go to the injured Hulsi Devi and Malti Devi. The sentences so passed were directed to run concurrently.

2. The prosecution case as it appears from fradbeyan of Nevani Rai recorded on 14.02.2001 at 11.30 a.m at Primary Health Center, Jasidih District-Deoghar is that on 13.02.2001 in the evening oxen belonging to appellant Guru Charan Rai and oxen belonging to informant

fought with each other. The wife of informant separated the oxen but appellant Sugia Devi started abusing her. Hakim Rai-P.W.2 who happens to be brother intervened and pacified the dispute prevailing between wife of appellant Guru Charan Rai and wife of informant. It is disclosed that appellant Sugia Devi informed the occurrence to her husband Guru Charan Rai who had gone to cut fire wood. After receiving information Guru Charan Rai armed with Kulhari, Degan Rai, Khagendra Rai and Sugia Devi reached to the place dragged out Bisni from her house assaulted and caused injuries on her head, shoulder etc. When Malti Kumari and Hulsi Devi daughter and daughter-in-law, respectively, of the deceased intervened to save Bisni Devi, they were also subjected to assault by the appellants and their associates. Mahri Devi who happens to be the mother of informant had also seen the occurrence and raised alarm after which the appellant and their associates fled away. It is necessary to mention that appellant-Guru Charan Rai and informant Nevani Rai are own brothers. On the basis of fardbayan of Nevani Rai, Deoghar, Jasidih P.S. Case No. 30/2001, dated 14.02.2001, under Sections 341/323/324/307/302/34 of the Indian Penal Code against Guru Charan Rai and others was registered.

The police after due investigation submitted charge sheet against Guru Charan Rai, Degan Rai and Sugia Devi. The case of Degan Rai was split up vide order dated 24.09.2001.

Guru Charan Rai and Sugia Devi were charged for the offence punishable under Sections 302/34, 307/34 and 341 of the Indian Penal Code. Since they did not admit the charge, they were put on trial.

3. The prosecution in order to substantiate the charges, examined altogether 14 witnesses whereas one defence witness has been examined on behalf of the appellants.

The learned Addl. Sessions Judge, F.T.C. considering the

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evidence and documents available on record, held the appellants guilty for the offence punishable under Sections 302/34, 307/34 and 341 of the Indian Penal Code and inflicted sentence as indicated above.

4. Learned Counsel Shri Manoj Kumar Mishra appearing as amicus curiae has challenged the finding of the trial court on the ground that no independent witness has supported the prosecution case. The informant has not supported his earlier contention made in the fardbayan. He says that his wife Bisni Devi sustained injuries when she was trying to separate the oxen belonging to him and Guru Charan Rai. It is disclosed that one of the ox became violent and it caused injury to Bisni by its horn as a result Bisni died. It further goes to show that they have compromised the case and he does not want to proceed further.

The Investigating Officer seized the axe, which was used for commission of the offence but it was not sent for its chemical examination to F.S.L. There are contradictions in the deposition of eye-witnesses and they do not support the version of the informant given in the fardbayan. One of the defence witness Khalis @ Kalim Ansari has supported the version of the informant. He has stated that one of the ox which was violent, caused injury to Bisni by its horn. The learned Additional Sessions Judge has not considered all these points in the impugned judgment and therefore the judgment of conviction and order of sentence is liable to be set aside.

5. Learned A.P.P. has opposed the arguments and submitted that appellant Gurucharan Rai and informant Nevani Rai are full blood brothers. The eye-witnesses are none else but the close relatives and they are related to the appellant as well as the informant. It is pointed out that P.W.1(Mahari Devi) and P.W.2(Hakim Rai) are none else but mother and brother of appellant-Gurucharan Rai and they have fully supported the prosecution case. The admitted fact is that informant is

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not an eye witness to the occurrence. He had given his fardbeyan, on the basis of information derived to him. Although he has not been declared hostile but facts remain that four eye witnesses have supported the prosecution case and out of them P.W.6 (Malti Devi) and P.W.9 (Hulsi Devi) are the injured eye witnesses. It is submitted that mother would not tell a lie to implicate her son. All the four witnesses i.e. P.W.1, P.W.2, P.W.6 and P.W.9 have categorically stated that appellant Sugiya Devi informed about the incident of fighting of oxen and exchange of abuses which had taken place between Sugiya and deceased Bisni. After receiving such information Gurucharn Rai along with his son Degan Rai and son-in-law Khagendra, wife Sugiya had reached to the place of occurrence and inflicted blows by means of 'Tangi' to Bisni. The companion accused also participated in the assaults. When P.W.6 and P.W.9 intervened, they were also subjected to assault.

The ocular evidence finds support from medical evidence given by Dr. Akhileswar Pratap Singh(P.W.4) and Dr. Rameshwar Mahto (P.W.5). The I.O. has supported the prosecution case. The seized axe was produced in Court. The prosecution has successfully proved the charges framed against the appellants and the trial judge has rightly held them guilty which need no interference.

6. Heard rival submissions and perused the case record. It is a case in which the appellants are husband and wife. The informant is own brother of appellant-Guru Charan Rai and the deceased is the wife of informant. P.W.1 and P.W.2, respectively are mother and brother of the appellant-Guru Charan Rai. P.W.6 and P.W.9 are daughter and daughter-in-law of the deceased. According to statement of P.W.1, she has been blessed with three sons Guru Charan Rai (appellant), Hakim Rai (P.W.2) and Nevani Rai (P.W.12). She has admitted that all the three brothers were living separately since long. The house of Hakim Rai was situated at

some distance but houses belonging to Guru Charan Rai and Nevani Rai were close to each other. The occurrence commenced on a petty cause of fighting of oxen belonging to brothers. Sugiya Devi wife of appellant Guru Charan and Bisni Devi (deceased) wife of informant had started hurling abuses on each other. In the meantime, Hakim Rai (P.W.2) intervened and separated them but the appellant Sugiya Devi was not satisfied with the intervention and she had gone to inform the occurrence to her husband Guru Charan Rai, who had gone to cut fire wood. Guru Charan Rai along with his son Degan, son-in-law Khagendra and wife Sugiya came back to the place of occurrence and he was armed with axe whereas companion accused were armed with lathi etc. Bisni Devi was taken out from her house and subjected to assault by the appellant and their associates. She sustained incised wound on her person and fell down. P.W.6 and P.W.9 intervened to save Bisni Devi, but they were also subjected to assault and sustained injuries on their person.

The informant reached home after the occurrence and received information regarding the occurrence. Bisni Devi was taken to hospital for her treatment where fardbayan of informant was recorded and a case as indicated above was registered as against appellants and others. The facts indicated above find support from depositions of P.W.1, P.W.2, P.W.6 and P.W.9. The informant in his deposition in Court has tried to save his brother-Guru Charan Rai and his wife by saying that he was informed by his mother that Bisni had sustained injury while she had gone to separate the fighting oxen. But Mahri Devi (P.W.1) who is mother of appellant and the informant did not support this contention of informant and she had given the statement, what was actually happened. Since evidence of P.W.1 and P.W.2 who are eye-witnesses find full corroboration from evidence of P.W.6 and P.W.9, who are injured eye witnesses, the testimony of informant, who is not an eye-witness, has

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been discarded from any consideration.

The defence story brought on record by the informant and D.W.1 stood falsified from the evidence of Dr. Akhileswar Pratap Singh(P.W.4). The doctor has outrightly rejected the suggestion that injuries appearing on the person of deceased Bisni would not be possible by sharp pointed weapon. The appellants had tried to make out a case that Bisni sustained injury caused to her by an ox by its horn and that caused her death. The doctor has found four incised wounds caused by heavy sharp cutting weapon and there was fracture of left parietal bone. P.W.5 Dr. Rameshwar Mahto had examined Hulasi Devi and Malti Kumari and he has proved injury report exhibit 2, 2/1, therefore, this fact finds support that P.W.6 and P.W.9 had sustained injury in the incident. P.W.10 and P.W.11 are daughters of deceased and they are hearsay witnesses and they had reached to the place of occurrence after receiving information regarding occurrence. Prem Nath S.I. of police has been examined as P.W.8A and he has proved fardbeyan exhibit-5, formal F.I.R. exhibit-6, inquest report exhibit-7 and seizure list of blood stained axe (Kulhari) exhibit-8. The axe seized in connection with the case was produced by P.W.14 Mahesh singh and the axe has been marked material exhibit-1. Subhash Chandra Sethi is the I.O. and he has been examined as P.W. 13. He has supported the investigation done by him. The I.O. has described the place of occurrence in para 2 of his deposition. He has further proved requisitions issued against the P.W.6 and P.W.9 and those requisitions have been proved Exhibits-11 and 11/1.

7. Considering the evidences of eye-witnesses which stood corroborated by medical evidence brought on record by P.W.4 and P.W.5, the facts and circumstances as well as evidence available on record, we do not intend to interfere with the judgment of conviction and order sentence recorded by the learned Trial Judge and accordingly the appeals

stand dismissed.

8. The judgment of conviction and order of sentence dated 26.08.2003 and 27.08.2003, respectively, passed by the Additional Sessions Judge, F.T.C.II, Deoghar in connection with Sessions Case No. 237 of 2001 corresponding to G.R. Case No. 95 of 2001 arising out of Jasidih P.S. Case No. 30 of 2001 is hereby upheld.

9. The bail bond of the appellant-Sugia Devi, who is on bail, stands cancelled. Accordingly, she is directed to surrender before the Court below within six weeks from today, failing which appropriate action will be taken by the Court below to secure her attendance.

**[D.N.Upadhyay,J.]**

**[Ratnaker Bhengra,J.]**

Jharkhand High Court, Ranchi  
dated the 29.02.2016  
P.K.S./N.A.F.R.