

PARME HANSDA AND ANOTHER  
v.  
STATE OF BIHAR (NOW JHARKHAND)

NOVEMBER 22, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

*Penal Code, 1860; Ss. 304 and 342:*

*Assault and murder—Father of informant caught by accused persons allegedly for committing theft—Assaulted by accused and villagers—Victim succumbed to injuries—Trial Court found accused persons guilty of committing offences under Sections 304 and 342 IPC and sentenced them accordingly—Affirmed by High Court—On appeal, Held: Deceased was attacked and beaten up not only by accused persons but also by villagers—No eye-witnesses to the incident—Though some of the witnesses deposed that accused had beaten the deceased but their evidence not reliable—Hence accused entitled to benefit of doubt—Conviction and sentence of the accused set aside—Directions issued.*

According to the prosecution, father of the first informant was caught by the accused persons allegedly for committing theft in their house and was brutally assaulted by them and villagers. The first information report was lodged by the son of the deceased. Later, the victim succumbed to the injuries. The police investigated the matter and submitted charge sheet. Trial court found both the accused persons guilty of committing the crime under Sections 304 and 342 IPC, convicted and sentenced them accordingly. An appeal was filed against the judgment of Trial Court, which was dismissed by the High Court. Hence, the present appeal.

Allowing the appeal, the Court

**HELD: 1.1.** From the facts of the case it appears that the deceased had tried to commit theft in the house of the accused persons during the course of which he was apprehended by the accused. They contacted the headman of the village and a Panchayat meeting was called, which imposed a fine of Rs. 100/-. [255-F]

A        1.2. There are no eye witnesses to the incident. No doubt, some of the witnesses have deposed before the trial court that it was the accused who beat the deceased; in view of the version given in the FIR the evidence on this point cannot be said to be totally reliable. [256-C]

B        1.3. From perusal of the portion of the FIR, it seems that the deceased was attacked by other villagers with lathi and danda. Thus the possibility that the deceased was beaten up by other villagers and not by the accused cannot be ruled out. Hence, they are entitled to the benefit of doubt. [256-B]

C        CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 115 of 2006.

From the Judgment and Order dated 5.5.2003 of the High Court of Jharkhand at Ranchi, in Crl.A. No. 38/91(P).

Gaurav Agrawal for the Appellants.

D        B.B. Singh (for Krishnanand Pandey) for the Respondent.

The Judgment of the Court was delivered by

E        **MARKANDEY KATJU, J.** This appeal has been filed against the judgment and order dated 5.5.2003 of the High Court of Jharkhand in Criminal Appeal No. 38 of 1991(P).

Heard learned counsel for the parties and perused the record.

F        The prosecution case in brief is that Jharia Kisku, father of the first informant, had gone to Simlong Hatia on Monday and when he did not return by night, then on the next day at about at 8 A.M., Prame Hansda (appellant No. 1) informed the first informant that his father Jharia Kisku was caught while he was committing theft of one Bati in his house in the night of Monday and thereafter he was tied with a rope. Thereafter the first informant and others went to Baraghaghari and they found Jharai Kisku tied at the house of the Pradhan. On their arrival a Panchayat was called for. It was stated that after committing theft of one Bati, Jharia Kisku was trying to flee away and thereafter he was caught and he was assaulted and tied with a rope. A sum of Rs. 100/- was also imposed as fine by the Panchayat. On enquiry from Jharia Kisku, it was found that he was brutally assaulted by the appellants by Lathi and Danda by levelling false allegation of theft against him and he

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was tied with a rope. The first information report was lodged accordingly. The police investigated into the case and submitted a charge sheet in the case against the appellants. The appellants appeared before the Additional Sessions Judge where charge was framed under Sections 342 and 304 of the Indian Penal Code to which they pleaded not guilty. A

After considering the evidence and hearing learned counsel, the trial court vide its order dated 8.11.1990 found the accused Parme Hansda and Churka Hansda guilty and convicted them under Sections 304 and 342 IPC. B

Against the aforesaid judgment, an appeal was filed in the High Court which was dismissed on 5.5.2003 by the impugned judgment. Hence, the present appeal. C

The post mortem report discloses the following injuries on the deceased:

- (i) One lacerated wound on right forearm ulna side measuring 2" x ½" x Bone deep. D
- (ii) One lacerated wound on left lower leg 5" below knee joint measuring 1" x 1" x Bone deep.
- (iii) One abrasion on left side of forehead measuring 1" x 1".
- (iv) Parietal bone of right side of head fractured and depressed. E
- (v) Ligature mark on both areas.

From the facts of the case it appears that the deceased had tried to commit theft in the house of the appellants during the course of which he was apprehended by the appellants. The appellants contacted the headman of the village and a Panchayat was called which imposed a fine of Rs. 100/-. F

What happened thereafter is mentioned in the FIR in which it is stated as under:

"....Thereafter, we asked my father, who stated that on the previous night Parme Hansda and Churka Hansda had assaulted him with lathi and danda and had shout thief-thief. On hearing this, a number of persons came there and thinking that I was the thief attacked me with lathi and danda and injured me. Thereafter, they entrusted me to the Pradhan Jetha Hembram who kept me for the night and till 1:00 O'clock on the next day at his house tied with a rope with a view to realize G H

A       the fine. On Tuesday at 1:00 O'clock, we were bringing him after paying the fine, when he died in Dadhi village. This is my statement, which has been recorded and signed."

B       From a perusal of the portion of the FIR extracted above, it seems that the deceased was attacked by other villagers with lathi and danda. Thus the possibility that the deceased was beaten up by other villagers and not by the appellants cannot be ruled out. Hence, in our opinion the appellants are entitled to the benefit of doubt.

C       We have carefully perused the evidence also in this case. There are no eye witnesses to the incident. No doubt, some of the witnesses have deposed before the trial court that it was the appellants who beat the deceased, in view of the version given in the FIR (mentioned above) the evidence on this point cannot be said to be totally reliable.

The appellants have already undergone imprisonment for 5 years.

D       For the reasons given above, the appeal is allowed. The conviction and sentence of the appellants are set aside. The appellants are directed to be released forthwith if not wanted in connection with any other case.

S.K.S.

Appeal allowed.