



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 20 OF 2014

BHAKTU GORAIN & ANR.

...APPELLANTS

VERSUS

THE STATE OF WEST BENGAL

...RESPONDENT

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard Shri Ranjan Mukherjee and Ms. Astha Sharma, learned counsel for the parties.
2. In Sessions Trial No. 05/1998 arising from Sessions Case No. 37/1997 pursuant to the FIR No.110/1993 lodged under Sections 341, 302 read with 34 of IPC at Jhalda Police Station, Purulia, by one Lakshmi Mahato, the eldest son of the deceased-Smt. Keshari Mahato, all the five accused persons

namely; Bhaktu Gorain (A-1), Surendra Gorain (A-2), Bandhu Gorain (A-3), Ranjit Gorai (A-4) and Rajen Gorain (A-5) were convicted and sentenced to rigorous imprisonment for life with a fine of Rs.1000/- each, in default of payment of which they were directed to serve further imprisonment of one month each. The above judgment and order of the conviction and sentencing the accused persons has been affirmed by the High Court vide judgment and order dated 21.07.2010.

- 3.** All the accused persons assailed the above conviction i.e. judgments and orders of the High Court and the trial court by filing the Special Leave Petition wherein leave was granted on 03.01.2014. The appeal against A-2, A-4 and A-5 was dismissed vide order dated 25.11.2011. Therefore, presently the appeal is concerning A-1 (Shri Bhaktu Gorain) and A-3 (Shri Bandhu Gorain) only.
- 4.** The aforesaid FIR was lodged at 08:45 a.m. on 27.09.1993 alleging that the incident in which the mother of the informant/complainant was put to death had occurred early in the morning at around 06:00 am. The five accused persons

surrounded (*gheraoed*) the deceased Smt. Keshari Mahato, the widowed mother of the complainant, and her daughter-in-law Smt. Bijali Mahato, who were returning from the pond after performing their daily ablutions. The accused persons were armed with *tangi*, *tabala* and *lathi*. Upon hearing the screams of the deceased and her daughter-in-law, the complainant along with his brothers Sudhir Mahato (PW-2), Rampada Mahato (PW-3) and the uncle's son Pratham Mahato (PW-5) rushed out of their house which was hardly 30 cubits away and found the accused persons assaulting the deceased on her head. The deceased instantly fell down and died on the spot. The accused persons made good their escape from the place of occurrence.

5. The Investigating Officer reached the place of occurrence and prepared an Inquest Report (*Ext.2*) of the dead body, seized the incriminating article (*Ext.5*), examined the witnesses and recorded their statements under Section 161 CrPC and prepared a sketch map (*Ext.4*) of the place of occurrence. The post-mortem was conducted by Dr. A.K. Hazari (PW-9) around

2 pm on the same day. All the accused persons were arrested by the police on 04.10.1993.

6. Admittedly, Lakshmi Mahato (PW-1), the informant, Sudhir Mahato (PW-2) and Rampada Mahato (PW-3) are the sons of the deceased and are the eye witnesses to the incident. Bijali Mahato (PW-4) is the daughter-in-law of the deceased [wife of Lakshmi Mahato (PW-1)] and is one another eye witness of the incident. Pratham Mahato (PW-5) is the nephew of the victim Raghu Mahato (PW-6) is a post-occurrence witness. Binode Mahato (PW-7) is the father-in-law of Krishna Chandra Mahato, one another brother of the informant who was visiting the house of the deceased due to *karam puja* and as such had an occasion to witness the heinous crime. The presence of Raghu Mahato (PW-6) and Binode Mahato (PW-7) has been established by the evidence of Sudhir Mahato (PW-2). The scribe of the FIR Subhash Mahato was examined as (PW-8). Dr. A.K. Hazari who conducted the post-mortem examination on the body of the deceased was examined as PW-9 whereas Sub-Inspector Santosh Kumar Das who was on duty at the police station and had received the complaint

was examined as PW-10. The Investigating Officer of the case had died and as such could not be examined.

- 7.** The contents of the FIR (*Ex.1*) were proved by the ocular evidence of Lakshmi Mahato (PW-1). He stated that he rushed to the place of occurrence along with his brothers upon hearing the screams of the deceased and his wife and upon reaching the spot they witnessed that the deceased had been stopped and surrounded (*gheraoed*) by the accused persons whereupon Surendra Gorain (A-2) and Bhaktu Gorain (A-1) assaulted her with *tangi* and *tabala* on her head whereas Ranjit Gorain (A-4) assaulted her with *lathi* on her right hand, consequently, the deceased fell down on the ground and died instantaneously.
- 8.** The aforesaid witness also testified that on the previous night, all the above five accused persons called the deceased a witch (*diayen*) who is the cause of trouble to the villagers as she used to indulge in witchcraft. Her activities have caused suffering to the wife of Surendra Gorain (A-2) who was not keeping good health for some time. The place where deceased

was killed was near the house of one Buka Mahato. He identified all the accused persons while they were in the court room.

9. The testimony of Lakshmi Mahato (PW-1) was corroborated by Sudhir Mahato (PW-2). He even corroborated the incident of the previous night wherein the deceased was abused for practicing witchcraft and alleged to be the cause of trouble to the villagers particularly to the wife of Surendra Gorain (A-2). He also stated that the place of incident was only at a distance of 40-50 cubits from their house and they have reached the spot instantly upon hearing the screams. Rampada Mahato (PW-3) categorically proved that when he reached the place of occurrence upon hearing the screams of his mother and that of his elder brother's wife Bijali Mahato (PW-4), he saw Surendra Gorain (A-2) assaulting his mother by a *tangi*, Bhaktu Gorain (A-1) by *tabala* and Ranjit Gorain (A-4) by *lathi* on the head whereupon his mother fell on the ground and died.

- 10.** Bijali Mahato (PW-4) in her testimony stated that after washing their face etc. she was returning with her mother-in-law to her house but on the way back, they were intercepted by all the five accused persons who surrounded (*gheraoed*) them and assaulted the mother-in-law with the weapons possessed by them in front of the house of Biju Mahato. Her mother-in-law fell down and died instantly. She also stated that there was a quarrel between her mother-in-law and the five accused persons on the previous night.
- 11.** It may be pertinent to mention here that all the aforesaid witnesses successfully stood the test of cross-examination and nothing could be extracted from them in cross-examination that could discredit their testimony. The credibility of the above witnesses is not in doubt and in fact they are wholly reliable witnesses in the facts and circumstances of the case.
- 12.** In addition to the above witnesses, there is one chance witness Raghu Mahato (PW-6). He rushed to the place of occurrence upon hearing the shouting of “*Mario Mario*”, he

found all the accused persons proceeding towards their house on the south with the weapons in their hands. He saw the deceased lying dead in front of the house of Buka Mahato. His evidence could not be demolished in cross-examination. He had signed the Inquest Report (*Ext.2*) as a witness.

- 13.** Dr. A.K. Hazari (PW-9), who conducted the post-mortem cross-examination, proved the post-mortem report and the 3 injuries reported therein. The said injuries are as follows:

“1). Incised wound over left side face, orbit and frontal region, vertically placed, measuring 6" x 1" bone cut.

On dissection, muscle left eye-ball cut, left xygomatic bone and frontal bone (left side) cut. Intracrtrianial haemorrhage was present.

2). Incised would over occipital region, transfersely placed, measuring 6" x 2" x bone cut.

On dissection, blood-clots were present. Occipital bone cut and intracrtrianial hemorrhage was present.

3). Swelling over right fore-arm.

On dissection, fracture both bone of mid-shaft of right forearm present.”

- 14.** He had opined that injury Nos.1 and 2 might have been caused by sharp cutting weapon like *tangi*, *tabala* etc. and

that injury No.3 might have been caused by hard and blunt substance like *lathi*. The cause of death was stated to be shock and hemorrhage as a result of the aforesaid injuries which was ante-mortem and homicidal in nature. The *tangi* which was the only weapon recovered was shown to him in open court and he opined that injury Nos.1 and 2 could have been caused by that type of weapon.

- 15.** In view of the above evidence and some other evidence which is not very material and worth referring, it is evident that all the witnesses have proved that all the five accused persons have surrounded (*gheraoed*) the deceased and her daughter-in-law Bijoli Mahato in the early hours of the day while they were returning to their home after performing their day's routine at the pond and had assaulted the deceased with *tangi*, *tabala* and *lathi* on her head due to which she fell down and died instantaneously. The injuries she received were enough to cause death.
- 16.** The submission on behalf of the appellants is that they never had any common intention to kill the deceased and that they

simply wanted to teach a lesson to the deceased so that she may not indulge in her practices of witchcraft in future.

17. The submission is devoid of any merit as admittedly an altercation had taken place between the parties on the previous night in which all the five accused persons were present and it is in furtherance of the said quarrel that all of them had appeared in the morning with reinforced vengeance. The very fact that they had assembled in the morning and surrounded (*gheraoed*) the deceased with deadly weapons is sufficient indication to infer that they had surrounded (*gheraoed*) in a pre-planned manner with a pre-determined mind. Thus, the submission that they had no common intention stands completely ruled out. Moreover, the nature of injuries which have been caused on the head of the deceased with the deadly weapons proves that they had assembled with the common intention and not merely to threaten her or to deter her from practicing witchcraft.

18. Notwithstanding that two of the accused persons Bandhu Gorain (A-3) and Rajen Gorain (A-5) had no weapons with them or might not have assaulted the deceased but certainly

they were part of the team that surrounded (*gheraoed*) the deceased with the common intention to kill after they had an altercation with her the previous night on the subject of practicing witchcraft.

19. In the light of the above clinching evidence and in the absence of any specific *lacuna* in the testimony of the witnesses and the documentary evidence adduced, we are of the opinion that the trial court had not committed any error in convicting and sentencing the accused persons with imprisonment of life. The conviction and sentence have rightly been affirmed by the High Court.

20. It may not be out of context to mention that the detention certificates of Bhaktu Gorain (A-1) and Bandhu Gorain (A-3) issued by the Superintendent of Midnapore Central Correctional Home, Paschim Midnapore, on 28.10.2022 certifies that they have served a total period of 15 years, 9 months & 24 days and 11 years, 7 months & 5 days (without remission) respectively as on the date of the certificate. They are, therefore, permitted to seek remission in accordance with the prevailing policy of the State and it is expected that if any

such application/representation is made by them, it shall be duly considered on its own merits. The application shall be decided in accordance with applicable policy within three months from the date of filing.

- 21.** In the facts and circumstances of the case, the Appeal lacks merit and is dismissed with the above observation.

..... J.
(ABHAY S. OKA)

..... J.
(PANKAJ MITHAL)

**NEW DELHI;
SEPTEMBER 12, 2023.**