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(2008) 07 JH CK 0021

In the Jharkhand High Court

Babulal Mahto and Others — APPELLANT

Vs

State of Bihar (Now Jharkhand) — RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2008) 3 JCR 580

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—The appellants have challenged the judgment of their conviction and sentence dated 30th June, 2008 as passed against them by the learned 5th Additional Sessions Judge, Giridih in S.T. No. 55 of 1990. The appellant No. 1 was convicted for the offence u/s 304 Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years while the appellant Nos. 2 and 3 were convicted for the offence u/s 324 of the IPC and sentenced to undergo rigorous imprisonment, for one year each.

2. The case of the prosecution stated briefly is that on the alleged date of occurrence all the accused persons including the present appellants formed an unlawful assembly being armed variously with weapons and they attacked the informant-party and as a result of assault by them one person, namely Mahadeo Singh sustained fatal injury to which he succumbed. Another injured, namely, Ajay Singh was referred to the hospital for his medical treatment. Thereafter on the basis of the informant''s Fardbeyan a. case was registered for the offence under Sections 147, 148, 149, 307 and 302 of the IPC and the Police after concluding the investigation submitted charge-sheet for the above mentioned offences against all the accused persons. On cognizance of the offences being taken, the accused persons were put on trial.

3. As many as 15 witnesses were examined at the trial by the prosecution

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including the injured Ajay Kumar Singh. The doctor (PW 5) had examined both the injured Ajay Singh and Mahadeo Singh. Post-mortem examination on the dead body of the deceased, Mahadeo Singh, was held after his death. The Medical Officer who conducted autopsy has also been examined.

4. On considering the evidences adduced by the prosecution, the trial Court recorded its finding that the evidences do not make out the offence u/s 302 of the IPC. However, on the basis of direct and specific evidence against one of the accused persons, namely, Babulal Mahato that he had caused the fatal injury to the deceased and also considering the nature and circumstances of the occurrence, the genesis and other factors related to the occurrence, had recorded its finding that the said accused Babulal Mahato is guilty for the offence u/s 304 Part II of the IPC. As regards the present appellant Nos. 2 and 3, the trial Court relied upon the statement of the three witnesses, which suggested that the appellant No. 2, Parmeshwar Mahto had assaulted the witness Ajay Singh and the appellant No. 3 Dulo Sao had given a ''pharsa'' blow on the person of the deceased Mahadeo Singh, which was though not fatal. The trial Court proceeded to record its finding of guilt against the appellant Nos. 2 and 3, Parmeshwar Mahato and Dulo Sao for the offence u/s 324 of the IPC and sentenced them to imprisonment for one year while sentencing the co-convict Babulal Mahato to rigorous imprisonment for five years. It is relevant to note here that during the pendency of this appeal, the appellant No. 1 Babulal Mahato had died and, therefore, the present appeal proceeds only against the surviving appellant Nos. 2 and 3, namely Parmeshwar Mahto and Dulo Sao.

5. Learned Counsel for the appellants while assailing the impugned judgment of conviction against the present two appellants, submits that the conviction of the appellants for the offence u/s 324 of the IPC is totally misconceived and it is against the weight of evidence on record. Learned Counsel explains that admittedly, even as observed by the trial Court in the impugned judgment, no injury report was produced nor was any doctor examined to prove the alleged injuries on the person of the witnesses, Ajay Kumar Singh. Furthermore, the doctor who had conducted the post-mortem examination has also stated that he did not find any external mark of ante-mortem injury on the dead body of the deceased and as such, considering these aspects, the trial Court ought to have held that there is no consistent and definite evidence to indicate that either of these two appellants had either assaulted any of the members of the informant party or had caused any injury to them. In absence of any definite evidence that the witnesses had sustained any injury or that any hurt was caused to them, no conviction could be sustained for the offence u/s 324 of the IPC.

6. Learned Counsel for the State on the other hand would support the impugned judgment of the trial Court by arguing that the evidence of three witnesses including the injured Ajay Singh (PW 3) clearly states that the present two appellants had assaulted the deceased as well as the witness Ajay Singh and that as a result of the injury sustained by him, the witness Ajay Singh had to be

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referred to the doctor for his medical treatment. It is further submitted that even though due to the non-examination of the doctor and non-production of the injury report, strict proof in support of the nature of injury could not be adduced by the prosecution but the evidences are sufficient to convict the appellant Nos. 2 and 3 for the offence u/s 323 of the IPC for voluntarily causing hurt to the witness No. 3 Ajay Singh.

7. From the perusal of the statements of the witnesses, though it appears that they have claimed to have seen both the present appellant Nos. 2 and 3, assaulting the deceased and the witness Ajay Singh but there is inconsistency in the oral testimony and the medical evidence. As far as the allegation against the appellant No. 3 Dulo Sao is concerned, who is accused of assaulting the deceased with a ''pharsa'', the doctor did not find any external injury caused by any sharp-cutting weapon like ''pharsa? on the dead body of the deceased. As regards the alleged assault made on the witness Ajay Singh, it is apparent that the prosecution has not produced any evidence to suggest that any hurt was caused to the said witness on account of the alleged assault made by the appellant No. 2 Parmeshwar Mahato on him. Where the witness claims to have sustained specific injury, it was incumbent upon the prosecution to offer adequate proof by producing the injury report and the adducing evidence of the doctor who had purportedly examined the injury. Failure to adduce corroborative evidence would certainly lead to an adverse inference against the prosecution. Furthermore, there is inconsistency in the evidence of the witnesses regarding the identity of the persons against whom the allegation of assault has been made. From the perusal of the impugned judgment, I find that the learned trial Court has not considered the evidence on record in proper perspective. The finding of the trial Court, therefore, is perverse.

8. Under the circumstances, I find merit in this appeal.

9. Accordingly, this appeal is allowed. The impugned judgment of conviction and sentence as recorded by the trial Court against the appellants for the offence u/s 324 of the IPC is hereby set aside. Since the appellants are on bail, they are absolved from the liability of their respective bail bonds.

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