
(2009) 04 JH CK 0097
In the Jharkhand High Court

Babulal Mahto and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 304, 307

Citation : (2009) 04 JH CK 0097

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—This appeal is directed against the judgment of conviction dated 02.01.2002 and order of sentence dated 07.01.2002 passed by Shri Hari Shankar Prasad, Sessions Judge, Giridih in Sessions Trial No. 196 of 1991, by which judgment, the learned Sessions Judge found the accused persons guilty for the offence under Sections 304/149 of the Indian Penal Code and convicted the appellants Babulal Mahto, Bhuneshwar Mahto and Basudeo Mahto (Appellant Nos. 1, 2 and 3) under Sections 304 and 325 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for seven years under Sections 304 of the Indian Penal Code and they have been further sentenced to undergo rigorous imprisonment for three years u/s 325 of the Indian Penal Code, with a direction that both the sentences passed against them will run concurrently. Appellants, namely, Kishun Mahto; Narayan Mahato and Bateshwar Mahto (Appellant Nos. 4, 6 and 8) have been found guilty u/s 324 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for one year.

All the other accused persons, namely, Ritlal Mahto, Kartik Mahto, Ramchandra Mahto, Harihar Mahto and Bhuneshwar Mahto @ Lato Mahto (Appellant Nos. 5, 7, 9, 10 and 11) have been found guilty under Sections 323 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for six months each u/s 323 of the Indian Penal Code.

2. The Prosecution case was started on the basis of fardbeyan given by the

informant, Basudeo Mahto (P.W.9) to the A.S.I., Nand Kishore Singh (P.W.12) of Hirodih police station at village Sihodih, stating therein that on 11.12.1990 at about 11.30 A.M. in the morning, the Informant, Basudeo Mahto (P.W.9) along with his brother Harihar Mahto (P.W.5), Mahadeo Mahto (P.W.7), Prameshwar Mahto (deceased), Iswar Mahto (P.W.2) and other female members of the house were cutting their paddy crops in their field, when the accused persons, namely, Kishun Mahto, Ritlal Mahto, Narayan Mahto, Baleshwar Mahto, Kartlk Mahto, Ram Chandra Mahto, Jiwan Mahto, Jagdish Mahto, Babulal Mahto, Harihar Mahto, Bhuneshwar Mahto armed with Lathi, Danda, Tangi, etc. came to the paddy field and started rebuking as to why they were cutting the paddy crops and when they objected to do so, on the Instance of Kishun Mahto, the accused persons surrounded the informant-party and started assaulting them with Lathi, Danda and Tangi. The Informant was assaulted by Kishun Mahto with lathi causing Injury on his left pakhura, left knee, right hand gutta, forehead and on back. The accused, Babulal Mahto assaulted his brother Prameshwar Mahto with pasa of tangi by which his leg got broken. His other brother, Mahabir Mahto, Harihar Mahto and Iswar Mahto were also injured. They all have sent to Giridih Sadar hospital for treatment. On hearing the hulla, villagers Magister Singh S/o Babu Singh along with others also came and stopped the accused persons, but In course of their mediation, Magister Singh also received injury. Thereafter, on seeing other villagers coming, the accused persons ran away.

3. On the basis of the said fardbeyan, the police registered a case under Sections 304, 304/149, 323, 324, 325, 147 and 148, 149 and 341 of the Indian Penal Code. It appears that during Investigation, witness, Prameshwar Singh died and Section 304/307 was also added and after investigation police submitted charge sheet under Sections referred to above.

4. Since, the case was exclusively triable by the court of Sessions, learned magistrate after taking cognizance committed the case to the Court of Sessions for trial and subsequently, the case was tried by the Sessions Judge, Giridih and the appellants were found guilty and convicted and sentenced as aforesaid.

5. In course of trial, the prosecution has examined as many as thirteen witnesses.

6. P.W.I is Bihari Mahto, who is the father of the informant, P.W.2 is Iswar Mahto, P.W.3 is Magister Singh, P.W.4 is Chandrika Mahto, P.W.5 Is Harihar Mahto, P.W.6 is Baldeo Mahto, P.W.7 is Mahadeo Mahto, P.W.8 Is Teklal Mahto, P.W.9 is Basudeo Mahto, the informant of the case P.W.10 is Dr. Suresh Chandra Sharma, P.W.11 is Dr. B.P. Singh, P.W.12 is A.S.I., Nand Kishore Singh, I.O. of the case and P.W.13 is Dr. Chandra Shekher Prasad. The defence has also examined two formal witnesses namely D.W.I, Khublal Yadav and D.W.2, Awadh Kishore Prasad Sinha.

7. It is submitted by the learned Counsel for the appellants that it appears from the evidences adduced In the court that they have changed the entire prosecution case as given in the fardbeyan by the informant, P.W.9, wherein he

had stated that the occurrence took place at 11.30 A.M., when he and his brothers with lady members were cutting paddy crops in the field, then the accused persons came and stopped them from working in the field and when they examined in the court they stated that occurrence took place at 7.30 A.M. In the morning and the accused persons were cutting the crops in the field when the informant and witnesses went there and objected and then the occurrence took place. Thus, it is submitted by learned Counsel for the appellants that this departure from the original statement of the informant, P.W.9 in the fardbeyan has made the entire prosecution case doubtful. It is further argued by learned Counsel for the appellants that the witnesses have proved the F.I.R. and the Injury report of the counter case and as many as seven persons were injured in the counter case, but the prosecution witnesses have failed to explain the injuries on the person of the accused persons and these two discrepancies have made the entire prosecution case doubtful and fit to be set aside.

8. On the other hand, learned Counsel for the State stated that the change in time and manner of occurrence as laid by the appellants are minor in nature and as such the conviction is well founded.

9. After hearing both the parties and after going through the entire prosecution case, I find that the main witness i.e. the Informant, P.W.9 and his brothers have changed the time and place and manner of occurrence, when they were examined in court.

P.W.1, Bihari Mahto stated that the occurrence took place on 11.12.1990 at 7.30 A.M. In the morning and he was at his home and when he received information that the accused persons are looting the paddy crops in the field containing Khata No. 19 and Plot No. 1282, which is their ancestral land, then P.W.1, Bihari Mahto rushed at the place of occurrence and saw that Narayan Mahto, Kishun Mahto, Ritlal Mahto, Baieshwar Mahto, Kartik Mahto, Basudeo Mahto, Bhuneshwar Mahto, Babulal Mahto, Bhuneshwar Mahto @ Lato Mahto, Jiwan Mahto, Harihar Mahto and Ramchandra Mahto were cutting the crops and looting the same. Basudeo Mahto and Babulal Mahto had tangi in their hands and Kishun Mahto and Baleshwar Mahto had also tangi and the other accused persons had lathis. P.W.1 further stated that when they asked them not to do so, then Prameshwar Mahto was assaulted by Bhuneshwar Mahto with lathi and then he felled down and Basudeo Mahto attacked on his leg below the knee (thehuna) with the pasa of the tangi. Thereafter, Babulal Mahto also assaulted Prameshwar Mahto with the pasa of tangi breaking his leg.

10. The informant, Basudeo Mahto (P.W.9) also departed from his original statement given in the fardbeyan. When he was examined in the court, he stated that the occurrence took place at 7.30 A.M. in the morning when he was at home and after hearing hulla, he went to his field and saw that Basudeo Mahto, Bhuneshwar Mahto, Babulal Mahto, Kishun Mahto, Ritlal Mahto, Narayan Mahto, Jagdish Mahto, Ramchandra Mahto, Harihar Mahto, Jiwan Mahto, Bhuneshwar Mahto @ Lato and Baleshwar Mahto @ Fattu were cutting crops in his field and

when his brothers Prameshwar Mahto, Iswar Mahto, Harihar Mahto and Mahadeo Mahto asked them not to do so, whereupon, Prameshwar Mahto was assaulted by Bhuneshwar Mahto with lathi and thereafter, Basudeo Mahto and Babulal Mahto assaulted him with pasa of tangi causing fracture on his right leg. P.W.9 along with Harihar Mahto, Mahadeo Mahto, Iswar Mahto and Magister Singh were also assaulted.

11. Similarly, the injured witness P.W.2, Iswar Mahto has also stated that the occurrence took place five years back at 7.30 A.M. in the morning when on hearing hulla he went to the field along with his brother Prameshwar Mahto and found that Basudeo Mahto, Bhuneshwar Mahto, Babulal Mahto, Kishun Mahto, Narayan Mahto, Ritlal Mahto, Kartik Mahto, Ramchandra Mahto, Harihar Mahto, Jiwan Mahto and Baleshwar Mahto @ Fattu were cutting and looting the crops of their land. The accused persons, namely, Basudeo Mahto, Babulal Mahto, Baleshwar Mahto and Kishun Mahto had tangi in their hands and all other accused persons had lathi. When they asked them as to why they were cutting the crops, they started assaulting. Prameshwar Mahto was assaulted by Basudeo Mahto with pasa of tangi and Bhuneshwar Mahto also assaulted him with lathi. The accused Babulal Mahto also assaulted him with pasa of tangi. P.W.2, Iswar Mahto also received injuries from the pasa of tangi by Baleshwar Mahto. He stated that the accused Kartik Mahto also assaulted him with lathi. Kishun Mahto assaulted Magister Singh with the pasa of tangi and Narayan Mahto assaulted Harihar Mahto with lathi, Mahadeo Mahto was assaulted by Baleshwar Mahto with pasa of tangi and Kartik Mahto assaulted Mahadeo Mahto with lathi.

12. Similarly, injured people P.W.3, Magister Singh, P.W.4, Chandrika Mahto, P.W.5, Harihar Mahto, P.W.6, Baldeo Mahto, P.W.7, Mahadeo Mahto, all have stated that the occurrence took place at 7.30 A.M. in the morning and after hearing hulla they went to the field, where they found the accused persons were cutting the crops in their field and on their objection, they assaulted them with lathi and other witnesses were also assaulted by the pasa of tangi causing injuries to them.

13. Thus, it appears that the entire prosecution story, as given in the fardbeyan, has been changed during the trial. There is no corroboration of the entire prosecution story as given in the fardbeyan including the time of occurrence and manner of occurrence during trial.

14. Moreover, during trial the defence has brought certain documents that shows that in the given time and place Injuries were caused to the appellants, but none of the witnesses have accepted that any injuries were caused to the defence. The informant, P.W.9, in Para 35, has clearly stated that he saw no injury on the person of any of the accused persons. P.W.1, Bihari Mahto, in Para 29, has stated that he saw no injury on the person of Babulal Mahto, Kishun Mahto, Narayan Mahto, Jagdish Mahto, Kartik Mahto, Baleshwar Mahto and Ritlal Mahto. P.W.2, Iswar Mahto also stated at Para 14 that had not seen any injury on the person of the accused persons. Thus, all the prosecution witnesses had denied to have

seen any injury on the person of the accused appellants.

15. In that view of the matter, in my opinion, the change of time of occurrence, the change of manner of occurrence and non-explanation of the injuries on the person of the appellants/accused have made the entire prosecution doubtful and all the appellants are entitled to get the benefit of doubts and hence all the appellants should be acquitted from the charges leveled against them.

16. Accordingly, the judgment of conviction dated 02.01.2002 and order of sentence dated 07.01.2002 passed by Shri Hari Shankar Prasad, Sessions Judge, Giridih in Sessions Trial No. 196 of 1991 is hereby set aside. This appeal is allowed and the appellants are acquitted from all the charges leveled against them. Since, the appellants are on bail, they are also discharged from the liabilities of their respective bail bonds.