
(2009) 04 JH CK 0087
In the Jharkhand High Court

Balram Mahto and Others

APPELLANT

Vs

The State of Now Jharkhand

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2009) 04 JH CK 0087

Hon'ble Judges : Prashant Kumar, J;Narendra Nath Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—The appellants, namely, Balram Mahto, Mista Mahto, Sitanath Mahto, Amarnath Mahto, Dhaniram Mahto, Hatia Mahto, Surjan Mahto, Mohar Mahto, Garam Mahto, Sonaram Mahto have challenged the judgment of conviction and order of sentence passed by 1st Additional Judicial Commissioner, Khunti dated 09.07.2001 in Sessions Trial No. 154 of 1990, whereby and whereunder they have been found guilty for the offence u/s 302, 302/149 of the I.P.C. and sentenced to undergo imprisonment for life.

2. The case of prosecution in short as per the fardbeyan of P.W. 3 Shiv Charan Mahto is that on 29.5.1987 at about 7.30 p.m. ,informant Shiv Charan Mahto, Ranjit Mahto(deceased), Mangu Mahto (deceased) and Bisam Mahto had gone for ploughing the lands of informant's daughter Balawati. It is alleged that while they were ploughing the land and sowing paddy crops, Sonaram Mahto armed with farsa, Dhaniram Mahto armed with farsa, Balram Mahto armed with lathi, Hatia Mahto armed with farsa, Sitanath Mahto armed with tabla, Misto Mahto armed with farsa, Mohar Mahto armed with bow and arrow, Surjan Mahto armed with farsa, Amar Mahto armed with farsa, Garam Mahto armed with lathi and other 3-4 persons came from the southern side and surrounded the informant and his companions. It is then alleged that Mohar Mahto assaulted deceased Mangu Mahto with arrow upon which Mangu Mahto fled towards north but Balram Mahto chased him and assaulted him with lathi due to that Mangu Mahto fell

down. Thereafter Sonaram Mahto assaulted Mangu Mahto on his leg from the blunt portion of farsa, Dhaniram Mahto had also assaulted Mangu Mahto with farsa due to that he received injury on his leg, Hatia Mahto gave farsa blow on the head of Mangu Mahto and Surjan Mahto assaulted him with farsa. Misto Mahto had assaulted Ranjit Mahto with farsa due to that Ranjit Mahto received injury on his head and fell down, Amar Mahto, inflicted farsa blow on the leg of Ranjit Mahto and Sitanath Mahto inflicted tabla blow on the leg of Ranjit Mahto. Due to the aforesaid assault, Mangu Mahto and Ranjit Mahto received serious injuries and became unconscious. It is alleged that after the aforesaid occurrence, all the accused persons fled away. Ranjit Mahto died on the place of occurrence itself. Whereas when the informant with the help of Ghanshyam Mahto, Dharam Mahto was bringing Mangu Mahto on a cot he died in the way at village Gonda. It is alleged that Sonaram Mahto was trying to take forcible possession of the land of his daughter situated at village Budhadih and due to which the present occurrence took place.

3. On the basis of aforesaid fardbeyan, Sonahatu P.S. Case No. 29 of 1987 dated 29.5.1987 was registered u/s 302/34 of the IPC and police took up investigation. After completing the investigation, police submitted charge sheet against the appellants as well as Duryodhan Mahto, Mirtunjay Mahto, Jagarnath Mahto, Bisheshwar Mahto, Motiram Mahto u/s 148, 149, 323 and 302 of the IPC. It appears that after the cognizance, the case was committed to the court of sessions as the offence u/s 302 of the IPC is exclusively triable by the court of sessions. The court below had framed charge against the appellants Misto Mahto, Amar Mahto, Sitanath Mahto u/s 302 of the IPC for committing murder of deceased Ranjit Mahto, whereas appellants, Mohar Mahto, Sonaram Mahto, Dhaniram Mahto, Hatia Mahto and Surjan Mahto were charged u/s 302 of the IPC for committing murder of Mangu Mahto. All the appellants and co-accused Duryodhan Mahto, Mirtunjay Mahto, Jagarnath Mahto, Bisheshwar Mahto and Motiram Mahto were charged u/s 302 read with Section 149 of the IPC for forming an unlawful assembly, with common object of committing murder of Mangu Mahto and Ranjit Mahto. It appears that aforesaid charges were explained to the appellants and other co-accused to which they pleaded not guilty and claimed to be tried. To prove the charges leveled against the appellants and co-accused, the prosecution had examined altogether eight witnesses in support of its case. The prosecution had also brought on record Ext.-1 series the signatures of witnesses on fardbeyan and inquest report, Ext.-2 is the fardbeyan.

4. On perusal of the impugned judgment, I find that the learned court below had acquitted Duryodhan Mahto, Mirtunjay Mahto, Jagarnath Mahto, Bisheshwar Mahto and Motiram Mahto from the charges leveled against them, however, the appellants were found guilty for the offences u/s 302 and 302/149 of the IPC and were convicted and sentenced to undergo imprisonment for life. The present appeal has been filed against the said judgment/order.

5. Assailing the impugned judgment, Sri B.M. Tripathy, learned senior counsel

appearing for the appellants submitted that in the instant case, the cause of death of deceased Mangu Mahto and Ranjit Mahto has not been proved because of non examination of doctor and also due to non production of post mortem report in court. It is submitted that due to the aforesaid defects, it is not established by the prosecution that the death of aforesaid two deceased are homicidal, consequently the prosecution had failed to prove that the deceased were murdered. Thus, the charges leveled against the appellants u/s 302 and 302/149 of the IPC are not proved. It is further submitted that the Investigating Officer has also not been examined in this case and due to the non examination of the Investigating Officer, the place of occurrence has not been ascertained and serious prejudice has been caused to the defence. It is further submitted that P.W. 1, Ahilya Devi was not mentioned as an eye witness in the FIR but the court below has erroneously relied upon her as an eye witness. All the witnesses are related to each other and admittedly are inimical to the appellants. Their testimony in the absence of corroboration from any independent witness is not reliable and it is not safe to convict the appellants on such evidence. Accordingly, it is submitted that the impugned judgment of conviction and order of sentence cannot be sustained.

6. On the other hand, learned Additional P.P. had supported the impugned judgment and submits that in the instant case, homicidal death of deceased Mangu Mahto and Ranjit Mahto were not challenged by the appellants. It is submitted that P.W. 1, 2 and 3 had categorically stated that deceased Mangu Mahto and Ranjit Mahto died due to the injuries sustained by them in course of occurrence. There is absolutely no cross examination of aforesaid three eye witnesses in this respect. It is further submitted that P.W. 4, 5, 6 and 7 have also categorically stated that they came after the occurrence and saw the dead body of deceased Mangu Mahto and Ranjit Mahto. The defence had not cross examined aforesaid witnesses on this point. It is submitted that since the prosecution witnesses have not been cross examined on the point of cause of death of aforesaid two deceased persons, under the law it will be presumed that the aforesaid fact stated by the witnesses is admitted by the defence. It is submitted that since the homicidal death of deceased is not in dispute, the post mortem examination loses its significance. It is further submitted that when the homicidal death of deceased is admitted by the defence, the non examination of doctor has no fatal consequences. In the instant case, place of occurrence is not in dispute nor the defence had drawn the attention of witnesses to their previous statements made u/s 161 of the Cr.P.C. for proving contradiction. Under the said circumstance, due to the non examination of the I.O., no prejudice has been caused to the appellants. The FIR is not the encyclopedia of entire prosecution story, if some material particular is omitted from the FIR then also the said evidence can be considered along with other evidence available on record. In view of the submissions made above, it has been submitted that there is no illegality and/or irregularities in the impugned judgment which requires any interference by this Court.

7. Having heard the submissions, I have carefully gone through the evidence available on record. P.W. 1 Ahilya Devi has stated that on the date of occurrence, in the morning, she along with Ranjit Mahto, Bisam Mahto, Mangu Mahto and Chiv Charan Mahto had gone to the field at village Budhadih . She had further stated that Ranjit, Mangu and Bisam were ploughing the field whereas Shiv Charan was planting paddy seedlings which she had brought. She then stated that in the meantime appellant Mohar Mahto armed with bow and arrow, Balram armed with lathi, Sonaram armed with farsa, Dhaniram armed with farsa, Hatia Mahto armed with farsa, Duryodhan Mahto armed with farsa, Surjan Mahto armed with farsa, Misto Mahto armed with farsa, Amar Mahto armed with farsa, Sitanath Mahto armed with tabla, Garam Mahto armed with lathi, Mirtunjay Mahto armed with lathi, Jagarnath Mahto armed with lathi arrived there. Mohar Mahto shot arrow on Mangu Mahto which caused injury on his back, Balram Mahto chased him and gave lathi blow due to that Mangu Mahto fell down in the field of Nakul Mahto. It is further alleged that Sonaram Mahto assaulted Mangu Mahto with the back portion of farsa, Dhaniram Mahto assaulted Mangu Mahto with farsa on his leg. Hatia Mahto also assaulted Mangu Mahto with farsa due to that Mangu Mahto received injury on his head. Surjan Mahto inflicted injury on the leg of Mangu Mahto with farsa. Duryodhan Mahto had also inflicted farsa injury on Mangu Mahto. It is then stated that Misto Mahto assaulted on the head of Ranjit with farsa due to that Ranjit fell on the land of Rammohan. After Ranjit fell down, Amar assaulted him with farsa causing injury on his leg. Sitanath Mahto also inflicted tabla injury on the leg of Ranjit. Mirtunjay, Garam Mahto and Jagarnath Mahto had also assaulted Ranjit with lathi. It is further stated that after the occurrence, appellants and other accused persons fled away towards southern side. She further states that while they were taking her husband (Ranjit Mahto) he died in the way at Chainpur, Mangu Mahto died in village Gonda while he was being taken to police station. She had stated that the land on which they were planting paddy belongs to nephew (Bhagina) of deceased Ranjit Mahto which at present is owned by Balawati , wife of Jagarnath. She stated that Balawati is the daughter of informant Shiv Charan Mahto. During the cross examination of this witness, the defence had only asked questions with regard to the land in question. I find that no question has been put to this witness with regard to the manner of occurrence, nor the defence has challenged her presence at the place of occurrence. The defence has also not put any question with regard to the homicidal death of deceased Ranjit Mahto and Mangu Mahto. The suggestion given to this witness by the defence that they have been falsely implicated due to the land dispute was denied.

8. P.W. 2, Vishambar Mahto has deposed that on the date of occurrence, in the morning he along with Ranjit Mahto, Mangu Manto, Shiv Charan Mahto had gone to the field at Budhadih for ploughing the land. While they were ploughing the field and Shiv Charan Mahto was planting paddy seedlings brought by Ahilya Devi in the land belonged to Balawati wife of Jagarnath Mahto, Mohar Mahto armed with bow and arrow, Balram Mahto armed with lathi, Sonaram Mahto armed with

farsa, Dhaniram Mahto and Hatia Mahto armed with farsa Surjan Mahto armed with farsa, Duryodhan Mahto armed with farsa, Misto Mahto armed with farsa, Amar Mahto armed with farsa, Sitanath armed with table, Jagarnath Mahto, Mirtunjay Mahto, Garam Mahto, Bisheshwar Matho and Motiram Mahto armed with lathi arrived there and surrounded them. Thereafter Mohar Mahto shot arrow on Mangu Mahto causing injury on his back, Balram Mahto chased him and assaulted with lathi due to that Mangu Mahto fell down in the field of Nakul, Sonaram and Dhaniram inflicted injury on his leg with farsa, Hatia Mahto assaulted Mangu Mahto with farsa due to that he received injury on his head. Duryodhan Mahto and Surjan Mahto assaulted Mangu Mahto on the leg with farsa. After receiving injury Mangu Mahto fell on the ground. He then deposed that Misto Mahto had inflicted farsa injury on the head of Ranjit Mahto, Amar Mahto had assaulted him on the leg with farsa and Sitanath Mahto had also assaulted him on the leg with tabla. He then deposed that Jagarnath Mahto, Mirtunjay Mahto, Garam Mahto, Motiram Mahto and Bisheshwar Mahto had assaulted Ranjit with lathi. After receiving the aforesaid injuries, Ranjit died then and there. Thereafter the appellants and other accused persons fled away. He also stated that Mohar Mahto had assaulted him with arrow due to that he received injury on his nose. After the retreat, they were taking Mangu Mahto to Rahe police station but in the way, at village Gonda, he died. From the perusal of cross examination, I find that from this witness also the defence had only asked question with respect to the land which they were cultivating. From the perusal of entire cross examination of this witness, I find that the defence had not put any question with respect to the manner of occurrence nor any suggestion was given to this witness that the deceased Ranjit Mahto and Mangu Mahto had not died due to the injury sustained by them.

9. P.W. 3 Shiv Charan Mahto is the informant of this case. He deposed that on the date of occurrence, in the morning Mangu Mahto , Ranjit Mahto and Bisam Mahto were ploughing land of Balawati and he was transplanting paddy seedlings brought by Ahilya Devi. He then deposed that at that time itself Sonaram Mahto armed with farsa, Dhaniram Mahto armed with farsa, Balram Mahto armed with lathi, Hatia Mahto armed with farsa, Sitanath Mahto armed with tabla, Misto Mahto armed with farsa, Amar Mahto armed with farsa, Mohar Mahto armed with bow and arrow, Surjan Mahto armed with farsa, Garam Mahto armed with lathi along with 4 to 5 other persons arrived and surrounded them. Mohar Mahto shot an arrow on Mangu Mahto due to that he received injury and tried to run away towards north but accused persons chased him, Balram Mahto assaulted him with lathi due to that Mangu Mahto fell on the ground, Sonaram Mahto assaulted him with back portion of farsa, Dhaniram Mahto assaulted on the leg of Mangu Mahto with farsa, Hatia Mahto and Surjan Mahto assaulted on the head of Mangu Mahto with farsa. After receiving the aforesaid injury Mangu Mahto become unconscious. He further deposed that Misto Mahto had assaulted on the head of Ranjit Mahto with farsa due to that he fell on the ground, Amar Mahto had assaulted on the leg of Ranjit Mahto with farsa and Sitanath Mahto assaulted on

the leg of Ranjit Mahto with tabla due to that Ranjit Mahto fell on the ground of Ram Mohan Mahto and died. Thereafter accused persons fled away towards southern side. He further deposed that they were taking Mangu Mahto to Rahe police out post on a cot but in the way at village Gonda he died. On his statement, fardbeyan was recorded and FIR was drawn by the Officer-in- Charge. He has proved his signature on the fardbeyan. From the perusal of cross examination, I find that only question put to him was with regard to the land in dispute. No question has been put to this witness regarding the manner of occurrence or the homicidal death of Ranjit Mahto and Mangu Mahto.

10. P.W. 4 Ghan Shyam Mahto, P.W. 5 Sudhan Mahto, P.W. 6 Labdhan Mahto, P.W. 7 Dharam Mahto and P.W. 8 Jagarnath Mahto had deposed that after receiving information they have gone to the place of occurrence and they saw the dead body of deceased Ranjit Mahto as well as of Mangu Mahto. They have also stated that eye witnesses had informed them regarding the manner in which the occurrence took place. From the perusal of cross examination of these witnesses, I find that the defence had not cross examined them with regard to their claim that they have seen the dead body of the aforesaid deceased persons.

11. From careful scrutiny of the evidence available on record, it is clear that the defence has not challenged the version of eye witnesses i.e. P.W. 1, 2 and 3 with regard to the manner of occurrence. Thus their aforesaid statement remain unchallenged. The story narrated by the aforesaid three eye witnesses is consistent and clear. Nothing has been elicited by defence on which their testimony can be discarded.

12. It is submitted by the learned Counsel for the appellants that the doctor has not been examined in this case nor the post mortem report was brought on record which is fatal for the prosecution. It is well settled that if a statement of fact made by a witness remain unchallenged in cross examination it has to be concluded that the fact in question is not disputed. In *Krantdan Sarda and Anr. v. Shailja Kanta Mitra and Anr.* AIR 1940 Pat 683 a Division Bench of Hon"ble Patna High Court has held that if a witness was not cross examined then his evidence was to be accepted, unless, of course, there remain inherent improbabilities. In the case of *State of Uttar Pradesh Vs. Nahar Singh (Dead) and Others*, their Lordships of Supreme Court has held that in the absence of cross examination, the evidence of witness remain unchallenged and it ought to have been believed. As noticed above, in the instant case the homicidal death of deceased Ranjit Mahto and Mangu Mahto as deposed by the prosecution witnesses has not been challenged by the defence while cross examining the said witness. Thus, as per the aforesaid settled principles of law, it has to be concluded that the homicidal death of aforesaid two deceased, namely, Ranjit Mahto and Mangu Mahto is not in dispute and same is admitted by the defence.

13. In *Kehar Singh and Others Vs. State (Delhi Administration)*, their Lordships of Supreme Court have held that in view of clear evidence about the cause of death, the post mortem examination loses all its significance. It becomes

important only in cases where the cause of death is to be established and is a matter of controversy. In *State of U.P. Vs. Lakhmi*, their Lordships had dealt with the consequences of non examination of doctor who conducted the post mortem examination on the dead body and held that no doubt it is the duty of the prosecution to prove post mortem finding in murder cases if they are available. Absence of such proof in the prosecution evidence in a murder case is a drawback for prosecution. However, we are not disposed to allow this case to be visited with fatal consequences on account of such a lapse because the accused has admitted that the death of deceased was a case of homicide. Recently in *Mukul Mahto and Ors. v. State of Jharkhand and Ors.* (Cr. Appeal No. 862 of 2001) decided on 15.10.2008 their Lordships of Supreme Court have again reiterated that since the homicidal death has not been disputed, the non examination of doctor is not fatal.

14. In the instant case, from the perusal of evidence available on record as well as from the perusal of statement of appellants made u/s 313 of the Cr.P.C. it is clear that the homicidal death of deceased Ranjit Mahto and Mangu Mahto has not been disputed. Under the said circumstance, in view of the aforesaid law laid down by their Lordships of Supreme Court, non examination of doctor, who held post mortem, had/is of no consequence on the case of prosecution. I, therefore, find no force in the aforesaid submission of learned Counsel for the appellants.

15. Learned Counsel for the appellants also submitted that due to the non examination of I.O., the defence had been highly prejudiced and therefore non examination of I.O. is fatal for the prosecution. On perusal of evidences of prosecution witnesses, especially cross examination, I find that the defence has not challenged the place of occurrence. The defence has also not drawn the attention of prosecution witnesses to their previous statement made before the police u/s 161 Cr.P.C. with a view to elicit contradiction. Thus, in my view, no prejudice has been caused to the defence due to the non examination of I.O.

16. It is further submitted by the learned Counsel for the appellant that the P.W. 1 Ahiliya Devi has not been named in the FIR as an eye witness of the occurrence and therefore her evidence is liable to be excluded from the arena of consideration. In my view, the aforesaid submission of learned Counsel for the appellants is not worth acceptable. It is well settled that non mentioning of the details and meticulous particulars in the FIR is no ground to reject the case of prosecution. It is equally well settled that if an important fact omitted in the F.I.R., then also that fact can be considered along with other evidence. Reference in this connection can be made to the decision in case of *Rattan Singh Vs. State of Himachal Pradesh*, . In this connection it is also worth mentioning that the defence while cross examining P.W. 1 and/or P.W. 2 and 3 had not challenged the presence of P.W. 1 at the place of occurrence, when the occurrence took place. Even no suggestion was given to the P.W. 1 that she was not present at the place of occurrence when the occurrence took place. Under the said circumstance, now it is not open for the defence to take a plea that her evidence is liable to be

discarded because she was not named as an eye witness in the FIR.

17. As noticed above, since the P.W. 1,2 and 3 had in consistent and clear manner deposed that these appellants had inflicted injuries on the person of deceased Ranjit Mahto and Mangu Mahto and due to the said injury the aforesaid two deceased died, and as the evidence of aforesaid witnesses remain unchallenged on the point of manner of occurrence, time of occurrence, place of occurrence, I am of the view that the court below has rightly convicted and sentenced these appellants for the offence u/s 302 and 302/149 of the IPC for committing murder of deceased Ranjit Mahto and Mangu Mahto. Thus, I find no reason to interfere with the impugned judgment of conviction and order of sentence.

18. In the result, this appeal fails and is accordingly dismissed. It appears that appellants Garam Mahto, Mohar Mahto and Sitanath Mahto are on bail, hence they are directed to surrender in the court below within a week to serve out the sentence. In the event of their failure to do so, the court below shall proceed in accordance with law.