
(2015) 02 JH CK 0110

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1205 of 2003

Bibhuti Mahato and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 3 AJR 595

Hon'ble Judges : Virender Singh, C.J.;Aparesh Kumar Singh, J.

Bench : Division Bench

Advocate : Nemish, for the Appellant; Anita Sinha, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, C.J.—All three accused namely Bibhuti Mahato, and his two sons namely Sunil Mahto and Vakil Mahto faced the trial for the charge of section 302/34 IPC for allegedly committing the murder of one Narottam Singh (hereinafter to be referred to as deceased) and father of PW Haradhan Singh, the first informant. All stand convicted for the said charge vide impugned judgment of the learned trial court dated 30th of June 2003/2nd of July, 2003 and sentenced to undergo imprisonment for life. Hence, the instant appeal.

2. At the very outset, it has been brought to the notice of the Court by learned State counsel that accused Bibhuti Mahato died in the jail on 30th of September, 2003. She has placed jail report in this regard. The instant appeal thus stands abated qua accused Bibhuti Mahato and survives qua his two sons namely Sunil Mahto and Vakil Mahto.

3. Sunil Mahto is stated to be in custody from initial date of his arrest, i.e. 19th of March 2001 whereas his brother Vakil Mahto is on bail. Sunil Mahto, thus has already undergone his substantive sentence of about 14 years. Since we are in the process of hearing old appeals pending in this court since long while

considering the incarceration period, priority has been given to the instant appeal for its final consideration.

4. First Information Report lodged by PW Haradhan Singh, the son of the deceased, is based on an information supplied to him by one PW-Amar Singh, his relative, who projects himself to be an eye-witness to the occurrence. It is alleged that on 8th of March 2001 at 7:00 A.M. the deceased had gone to the pond of village for catching the fish, when at about 11:30 A.M. accused Bibhuti Mahato (dead), Sunil Mahto and Vakil Mahto came there with Talwar and Tangi (both sharp edged weapons) and assaulted Norottam Singh who got injured and ran away towards one side where he was again assaulted by the accused with the aforesaid weapons. He died at the spot. It is then stated that PW Haradhan Singh along with his uncle Satya Naryan Singh went to the pond and found the dead body of his father lying there. The motive projected for causing the murder is catching of the fish from the said pond in which the complainant side was also claiming its share.

5. It appears from the original FIR available on record that the time of giving information to the police is 14:15 hours (2:15 pm) and the information which is made the basis of lodging of FIR was supplied to the PW Haradhan Singh by Amar Singh at 2:00 P.M., as he had gone to Bazar and came back at that time only. The distance between the place of occurrence and the police station-Patamda where the FIR was lodged, is shown to be 22 kms.

6. The investigation of the present case was conducted by PW Banke Lal Choudhay the Officer-in-Charge of the aforesaid police station and after its completion all the three accused were sent for trial.

7. It needs to be mentioned that during the trial, the Public Prosecutor moved an application under section 311 Cr.P.C. for examining other two eyewitnesses namely Radha Nath Kevorto and Sachi Kevorto as the statement of these witnesses were also recorded during investigation but their names were not figuring in the list of prosecution witnesses supplied along with the chargesheet filed against the accused. The said application was allowed by the learned trial court, as such they were examined as court-witnesses (CW1 and CW2 respectively). Besides this, the investigating officer also recorded the statements of other persons also who projected themselves as eye-witnesses to the occurrence namely PWs Ghashi Ram Singh, Anil Singh (a student) and Sagar Singh. They happened to be in relation of the deceased. These witnesses have stepped into the witness box to unfold the prosecution case.

8. The investigating agency also recorded the statement of PW Depali Singh wife of PW Haradhan Singh, the first informant. She is one who had seen the three accused running from the place of occurrence.

9. Let us now rescan the entire prosecution evidence available on record.

10. Ghashi Ram Singh, when stepped into the witness box, after stating the

manner in which the deceased was assaulted at the pond, in his cross-examination has categorically denied the presence of PWs Sagar, Amar Singh and Anil Singh stating that they were present at their houses at the time of occurrence. He stated that he could not say as to whether Amar Singh had given any information to the son of the deceased (informant herein). He rather stated that they had not given any information about this occurrence to any one and had all gone to the police station after one and half hour of the occurrence. It is also the case of PW Haradhan Singh that he had gone to the pond. From the evidence of PW Ghashi Ram Singh who projects himself as an eye-witness to the occurrence, one important fact which surfaces is that PW-Amar Singh was not present at the time of occurrence. In this factual backdrop, who gave information to PW Haradhan Singh, the first informant, about the main occurrence is shrouded under thick clouds of doubt.

11. It would now be relevant to read the evidence of Amar Singh. Undoubtedly if one looks at examination-in-chief of this witness, it appears that he is one who could see occurrence from even minutest angle which normally is not possible, but when was cross-examined, he was very categoric in stating that Depali Singh, Anil Singh, Sagar Singh, Ghashi Ram, Radha Nath Kevorto and Sachi Kevorto (examined as CW1 and CW2), Gurudhar Mahato and Rakhal Mahato had reached there after hearing the noise (in common parlance Hulla Sun Kar Aye Thay). He is categoric in stating that he disclosed about the occurrence to these persons. Who was actually present at the time of occurrence, thus becomes very doubtful.

12. The entire prosecution case is originally set up on the information of PW Amar Singh only. If his presence at the scene of occurrence turns out to be doubtful, the evidence of other prosecution witnesses namely Ghashi Ram Singh, Sagar Singh Anil Singh would be seen with a pinch of salt for the reason that when Amar Singh supplied the complete information to PW Haradhan Singh, names of other witnesses were not disclosed. As stated above, they all are in relation of the deceased. Had they actually seen the occurrence along with Amar Singh, if at all, we believe his evidence as it is which is otherwise of doubtful character, he could not escape the names of these witnesses at all while disclosing every details of occurrence to PW Haradhan Singh. What appears to us is that neither PW Amar Singh had actually seen the occurrence nor the other three witnesses, namely Ghashi Ram, Anil Singh and Sagar Singh, if one looks at the evidence of PWs Ghashi Ram and Amar Singh minutely and in right perspective. It is the case in which not only the witnesses are contradicting each other on certain vital aspects, they are rather very specific in denying the presence of one and the other. This would certainly create doubt in the mind of the court to hold as to whether theses witnesses have actually seen the occurrence or have subsequently come forward being in close relation of the deceased.

13. It is well settled that the evidence of the relation witnesses is not to be

discarded merely because of relation with the deceased, but the test of caution has to be applied. Here is the case in which as per the prosecution, certain other villagers also happened to be there but they have not been produced during trial, instead all the witnesses who came forward are related to the deceased in one way or the other. Therefore, while applying the test of care and caution on the eye version account available on record, what appears to us is that the case of the prosecution is not free from doubt so far as presence of so called eyewitnesses is concerned. We thus do not find any difficulty in discarding the evidence of the eyewitnesses at the time of alleged occurrence.

14. The evidence of PW Deepali, wife of PW Haradhan Singh, although, does not turn out to be that relevant so far as the main occurrence is concerned, as she did not see the three accused causing injuries on the person of the deceased (her father-in-law), but she had seen them running from the place of occurrence. One can gather from her evidence that she is one who was incidentally present near the pond. This goes to show that she had gone out of the house towards pond side. It is not understandable if she had seen the accused running from the place of occurrence, she would not disclose the said fact to her husband. PW Haradhan Singh did not whisper a word about her presence in the FIR. She when stepped into the witness box, rather demolished her presence in cross-examination stating that at the time of occurrence she was present in the house along with her husband.

15. We also find some infirmities vis-?-vis eye version account and the medical evidence after looking at the post mortem report, but we do not feel the necessity entering into a detailed discussion in this regard, once finding eye version account to be untrustworthy.

16. What is gatherable from the entire evidence available on record that a crude attempt has been made by the prosecution agency to import persons from the family of the deceased only as eyewitness to the occurrence whereas it appears that they had actually not seen the occurrence. The prosecution case, in its totality, thus turns out to be doubtful with regard to the complicity of the accused in commission of the alleged offence. We thus extend benefit of doubt to all the three accused with regard to their alleged participation in the present occurrence.

17. The net result is that the appeal on hand stands allowed.

18. Accused Sunil Mahato son of Bibhuti Mahato who is stated to be in custody since March, 2001 shall be released forthwith in this case if not required in any other case. Accused Vakil Mahto who is stated to be on bail during the pendency of the appeal shall be discharged of the bail bonds furnished by him during the pendency of the appeal. Accused Bibhuti Mahato is already dead. Jail Authority be informed accordingly. Learned trial court shall also be apprised of the outcome of the instant appeal forthwith.

19. Let the trial court record (in original) be remitted back to the court concerned.