

(2006) 11 JH CK 0032

In the Jharkhand High Court

Case No : Criminal Appeal No's. 479 and 496 of 2002

Braj Kishore Mandal and Others

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 27-11-2006

Acts Referred:

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

Citation : (2007) 2 JCR 51

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Singh, J.—As both the appeals arise out of the same judgment, they are being heard together and disposed of by this common judgment.

2. All the appellants have preferred these appeals against the judgment of conviction and sentence dated 6.8.2002 passed by 1st Additional Sessions Judge, Giridih in Sessions Trial No. 370 of 1995 whereby and whereunder appellants in Cr. Appeal No. 496/2002 have been convicted and sentenced as follows—the appellant No. 1, Braj Kishore Mandal has been convicted u/s 304 Part-II of the Indian Penal Code and appellants No. 2 to 4, namely, Rupan Mandal, Sudama Mandal and Bandhu Mandal have been convicted u/s 304 Part-II/149 of the Indian Penal Code. Further Braj Kishore Mandal, Sudama Mandal and Bandhu Mandal have been convicted u/s 148 of Indian Penal Code. Further Sudama Mandal has been convicted u/s 325 of the Indian Penal Code, Further appellants Braj Kishore Mandal and Bandhu Mandal are convicted u/s 324 of the Indian Penal Code and lastly appellant Braj Kishore Mandal, Rupan Mandal, Sudama Mandal and Bandhu Mandal have been convicted u/s 323/149 and 147 of the Indian Penal Code and sentenced to undergo R.I. for Six months for their conviction u/s 147 of the Indian Penal Code, further Six months u/s 323/149 of the I.P.C. Further each of them except Braj Kishore Mandal R I. for five years for their conviction u/s 304 Part -II/149 of the Indian Penal Code. Further Sudama

Mandal to undergo R.I. for 3 years for his conviction u/s 325 of the Indian Penal Code. Further each of them except Sudama Mandal and Rupan Mandal to undergo R.I. for one year u/s 324 of the Indian Penal Code and lastly Braj Kishore Mandal to undergo R.I. for seven years for his conviction u/s 304 Part -II of the Indian Penal Code, all the sentenced to run concurrently.

The appellants of Cr. Appeal No. 479 of 2002 have been convicted and sentenced as follows- All the appellants have been convicted u/s 147, 304(part-II)/149, 323/149 of the Indian Penal Code, the appellant Ishwar Mandal and the appellant Badri Mandal were found guilty u/s 148, 324 of the Indian Penal Code and further sentenced all the appellants to undergo R.I. for five years u/s 304(part-II)/149 , six months R.I. u/s 147 of the I.P.C., the appellant Ishwar Mandal and Badri Mandal were sentenced to undergo R.I. for one year for offence u/s 324 of the Indian Penal Code and all were sentenced to undergo R.I. for six months u/s 323/149 of the Indian Penal Code, all the sentences to run concurrently.

3. The factual matrix leading to these appeals are that in the morning of 6th April 1995 females of the family of informant Bajo Mandal and appellants were picking Mahua flowers from two trees situated in the field in Mauza Sitakohbar P.S. Deori, district-Giridih when some altercation took place between them. Further stated the appellants arrived there variously armed and started to abuses the mother, Bhabhi and niece of the informant. The informant and witnesses arrived at the place of occurrence on alarm raised by the females to protest. However, the appellants started assaulting the informant the other witnesses resulting in injuries on them. It is alleged that the appellant Braj Kishore Mandal assaulted the deceased Dukhan Mandal with Farsa on the head who fell down. Thereafter the appellant Rupan Mandal asked all others to kill thorn. The appellants accordingly, assaulted the witnesses with lathi, iron rod and farsa. The villagers assembled and informant along with injured persons was shifted to State dispensary Deori for their treatment. Police arrived and recorded the statement of informant at 12 noon and registered Deori P.S. Case No. 40 of 1995 u/s 147, 148, 149, 323, 324, 307 of the Indian Penal Code. The deceased Dukhan Mandal during treatment breathed his last. As such charge sheet was submitted against all the accused persons u/s 302/149 of the Indian Penal Code and other offences.

4. The case was committed for trial by the court of session, where the appellants along with others were charged u/s 302/149, 307/149, 323/149 and 147, 148 of the Indian Penal Code jointly and separately. The appellant Braj Kishore Mandal was further charged u/s 302 separately. The appellant Sudama Mandal was charged u/s 325 separately. The appellants pleaded not guilty claiming false implication. They have further pleaded that on the same day and time at same place they were subjected to assault for which another Deori P.S. Case No. 41 of 1995 was registered by police against the informant side.

5. The trial court after recording the evidence and considering the defence, found and held all the appellants guilty under various Sections including Sections 302/149, 307/149 of the Indian Penal Code and sentenced them at aforesaid.

6. These two appeals have been preferred on the ground that the learned trial court has not considered the material available on record properly. It is further asserted that the learned trial court came to an erroneous finding that the appellants were aggressor without considering the fact that dispute arose because of high handed activities of the informant side. It was also pointed out that P.W. 4 and 10 have not supported the prosecution case rather the defence version. Therefore the reliance placed by the trial court upon interested witnesses deserves to be set aside. It was also stressed before me by the learned Counsel for the appellants that even if materials available on record are accepted, conviction of all the appellants u/s 304 (part-II) /149 of the Indian Penal Code is not maintainable as the single blow resulting in death of Dukhan Mandal caused by Braj Kishore Mandal was not the common object of the appellants. According to learned Counsel for the appellants the death of Dukhan Mandal occurred because of improper treatment.

7. I have gone through the materials on record along with submissions made on behalf of the appellants in both the appeals. The prosecution has examined altogether 14 witnesses including informant and four injured. The admitted facts on record is that in the morning of 6th April 1995 females from both sides were picking Mahua Flowers situated in the field at about half km. from the village when this occurrence took place. This is also undisputed fact on record that exchange of blows with conventional arms has taken place between the parties. This has come on record that the counter case tried by the judicial magistrate Giridih resulted in acquittal of the informant side. Therefore the fact that exchange of blows took place in which the informant side lost life of Dukhan Mandal and further injuries on other witnesses has to be considered on its own merit P.W. 6 Tipni Devi, P.W. 7 Chulhia Devi have specifically said that when they were picking flowers, two female appellants arrived their with lathi and started pushing them. Thereafter all the ten appellants arrived at the P.O. with arms. According to them they raised alarm on which the witnesses including the deceased came there. P.W. 6 is the wife of deceased Dukhan Mandal who specifically mentioned that her husband was assaulted with Farsa by the appellant Braj Kishore Mandal. They have been cross examined at length without any benefit to the defence side. P.W. 7 is mother of the deceased who supported P.W. 6 in details. P.W. 1 Baleshwar Mandal, P.W. 2 Chowa Rai, P.W. 3 Jitan Mandal, P.W. 4 Sudama Mandal , P.W 11 Bajo Mandal are injured and eye witness of the occurrence, their presence has not been denied by the defence rather they were made accused in counter case. They have been examined by Dr. Manjurul Hassan at the State dispensary and various injuries were found on them vide Ext.- 8 series. The same witness has also examined deceased Dukhan Mandal and found incised wound on frontal bone of head 3"x 1"x bone cut. Later on post mortem report of the deceased Dukhan Mandal brought on record by P.W. 12 Dr. B.P. Singh who supports this injury on scalp resulted in his death within eighteen hours vide Ext.-2. The prosecution further brought on record evidence through other witnesses who wore eye witness of the occurrence. P.W. 8, 9, 10, P.W. 13 is

the I.O. of this case, he proved the fard beyan as Ext.-3, FIR as Ext.-4 and proved the inquest report prepared by him as Ext.-5 According to him the place of occurrence is situated in the field out of village at a distance of half k.m. During cross examination he admitted that counter case has been numbered as Deori P.S. Case No. 41 of 1995. He has also recorded the statement of deceased on 6th April 1995. Some minor contradictions in the statement of injured witnesses were brought to his attention, however this does not make much difference because injuries on these witnesses were proved by doctor P.W. 14.

8. On consideration of the evidence available on record, it appears that prosecution witnesses have made out a consistent case of assault upon deceased. The learned trial court has considered all these aspect vide para 8 to 13, I do not find any material on record to disagree with the finding arrived at by the learned trial court. The learned trial court has further considered the circumstances in which death of Dukhan Mandal resulted due to single incised wound on his head attributed to the appellant Braj Kishore Mandal. In this context the learned Counsel for the appellants stressed that since the assault was made in spur of moment during the exchange of blows all the appellants may not have any common object to cause death. Sri Sharma learned Counsel for the appellants pointed out that other appellants as members of the unlawful assembly have been convicted and held liable of this death but they did not have such common object to cause the death of Dukhan Mandal. Sri Sharma further pointed out that appellant had no such intention, as they did not give any assault upon the deceased. Therefore they may be absolved of the charges u/s 304 Part-II/149 of the Indian Penal Code. Sri Sharma has relied upon 1996(2) ECC 371 SC and 1976(2) CLJ 674 to point out that in the facts of the present case common object to cause death was not available.

9. The learned Counsel for the informant relied upon Ram Dular Rai and Others Vs. State of Bihar, , their Lordships have been pleased to hold that a common object of unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence and inference is to be deduced from the circumstances of each case, relied upon Lalji and Others Vs. State of U.P., . The evidence on record shows that all the appellants arrived at the place of occurrence from their house situated at half k.m. from the village having lathi, iron rod and Farsa. Therefore the common intention of the unlawful assembly was to assault the informant side. However this has come on record that appellant Braj Kishore Mandal did not repeat any blow upon the deceased nor the deceased was assaulted by other appellants, in furtherance of their common object, which was not to cause death. It is further found with evidence of P.W. 14 that Dukhan Mandal was referred by them for better treatment to Sadar Hospital, Giridih and due to non availability of any vehicle, Dukhan Mandal breathed his last with cardio respiratory failure at Deori Primary Center same evening at 4.30 p.m. The facts on record therefore can not sustain the conviction of all the appellants except Braj Kishore Mandal u/s 304 Part-II/149 of the Indian Penal Code. Accordingly, their conviction and

sentence u/s 304 Part-II/149 is hereby-set aside.

10. However the death of deceased Dukhan Mandal has resulted due to single blow caused by Farsa on his head, which has been proved beyond doubts by evidence available on the records. In such circumstances, the conviction of the appellants Braj Kishore Mandal u/s 304 Part-II is confirmed. However in the circumstances of this case, the sentences of Braj Kishore Mandal is reduced to R.I. for Five years.

11. As discussed above, it is apparent from the evidence on record that all other appellants were members of unlawful assembly and participated in assault upon the informant and other injured witnesses. It has also come on record that they were armed with lathi, iron rod and Farsa respectively, for which they have been found and held guilty u/s 323, 324, 325 of the Indian Penal Code Appellant Sudama Mandal has been held guilty for causing grievous injury on P.W. 1 Baleshwar Mandal vide injury report Ext.-8/1 for which the learned trial court sentenced him to serve R.I. for three years u/s 325 of the Indian Penal Code. Considering the facts and circumstances of this case, the conviction of appellant Sudama Mandal u/s 325 I.P.C. is confirmed. However the sentence is reduced to R.I. for one year. So far the conviction of all appellants u/s 323, 324, 147, 148 of the I.P.C. is concerned, it deserves to be confirmed but the sentences are reduced to the period already undergone with a fine of Rs. 500/- each on both counts. The appellants shall deposit the fine within four weeks from today failing which they shall serve S.I. for one month on each count.

12. In the result, these two appeals are dismissed with modification in sentences.