

(2006) 09 JH CK 0049

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 403 of 2001

Ganga Mahto

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

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

Citation : (2006) 4 JCR 565

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : Arjun Narayan Deo and Ram Lakhan Yadav, for the Appellant; APP, for the Respondent

Judgement

1. The sole appellant, Ganga Mahto stand convicted for the offence u/s 302 of the Indian Penal Code and sentenced to undergo R.I. for life by judgment dated 28th August 2001 in Sessions Trial No. 406 of 1993 by the 5th Additional Sessions Judge, Giridih.

2. Brief facts leading to this appeal are that the informant P.W. 6 Chhathu Mahto along with P.W. 1, 2, 3, 4, and 5 was bringing harvested Til crops for thrashing towards their Bari in the after noon of 11.11.1992 when in all six accused persons including the appellant surrounded them in Mauza Khudra Garmando, P.S. Sariya. The informant party had grown this crop in their land situated in plot No. 100, Khata No. 2 registered in the name of their mother and deceased Chhakan Mahto. As further stated the appellant along with others assaulted P.W. 3 Prayag Mahto son of the informant Chhathu Mahto on which they raised alarm. According to the informant the deceased Chhakan Mahto arrived at the spot and he was assaulted with tangi by this appellant on his head. The aggressor party further assaulted P.W. 5 Sahdeo Yadav and thereafter fled away. The reason behind this assault was that the appellant has disputed regarding said land belonging to the informant.

3. The informant along with injured persons brought Chhakan Mahto for his

treatment to Sariya and got his statement recorded by Sariya police at about 9. p.m. same day on the basis of which Sariya P.S. Case No. 264 of 1992 under Sections 147, 148, 149, 307, 324 I.P.C. was registered. The injured persons were forwarded for their treatment, but Chhakan Mahto breathed his last in the morning of 13.11.1992. The police investigated the case and finally submitted charge sheet against six persons under Sections 147, 148, 149, 324, 307 and 302 of the Indian Penal Code. Their case was committed to the court of sessions for trial where the charges were framed on 14.3.1996 and later on modified on 14.8.2001. The appellant Ganga Mahto has been charged under Sections 302 of the Indian Penal Code separately while other accused persons were charged u/s 302/149 of the Indian Penal Code as well as 307/149 of the Indian Penal Code and separately all of them u/s 148 of the Indian Penal Code. The accused persons pleaded not guilty and claimed false prosecution. According to them the informant party has assaulted the accused Munshi Mahto and Gango Mahto the appellant by trespassing in their Khalihan where they had kept Til crops grown on Plot No. 97 and 98 belonging to them. They have brought on record Ext.-A, C.C. of charge sheet in Sariya P.S. Case No. 264 of 1992, Fardbeyan of the said Sariya P.S. case along with formal FIR, Sale deed and three rent receipts marked as Ext. A, B, C, D and E Series. They specifically denied that Chhakan Mahto was assaulted by them and claimed innocence.

4. The learned trial court after examining the witnesses produced from both sides finally concluded that appellant Ganga Mahto was guilty u/s 302 of the Indian Penal Code and acquitted all other five accused persons from all charges vide judgment dated 28.8.2001.

5. The present appeal has been preferred on the ground that the learned trial court has failed to consider the defence properly. It is also asserted that the prosecution version was not supported by any positive evidence rather the defence case appears to be more probable. The learned Counsel appearing for the appellant Sri Arjun Narayan Deo strenuously argued that the place of occurrence has not been fixed in the present case particularly in absence of non examination of the I.O. It has been also suggested that in absence of the identification of place of occurrence defence version should have been relied upon. According to Sri Deo when the major portion of prosecution case was disbelieved the learned trial court has committed an error on record by holding the appellant Ganga Mahto guilty u/s 302 of the Indian Penal Code. Our attention was brought towards contradictions in the statement of eye witnesses P.W. 2, 3 and 4 as well as P.W. 5 where some exaggeration involving other accused persons in commission of the offences was made. According to Sri Deo, P.W. 6 has asserted that accused Dhaneshwar Mahto and Munshji has assaulted Chhakan Mahto but it was not supported by P.W. 3 and 5. Sri Deo suggested that when a free fight took place in the Khalihan of the appellant the deceased might have received such injuries without any intention on side of the appellant. It is stressed that the injuries found on Chhakan Mahto do not show that repeated blows were made, as such; the intention to cause death was missing. Therefore

the conviction of the appellant relying upon the interested witnesses deserves to be set aside.

6. We have anxiously considered the submissions made on behalf of the appellant along with the materials on record. The prosecution version is that they were bringing the harvested Til crops for thrashing at their Bari when the occurrence took place in the after noon of 11.11.1992. The date of occurrence and time is not disputed by the defence rather the appellant had tried to shift the P.O. to their Khalihan situated in plot No. 97.98 belonging to them. The appellant has examined himself as D.W. 3 in this context. On perusal of his statement as D.W. 3, we find that the Til crop was ready for thrashing kept by defence party when the informant party arrived to lift it. According to him when he objected he was assaulted with tangi, lathi and when other accused persons Munshi, Khago and Rupan came to his rescue, they were also assaulted. He has admitted that he went to police at about 10 a.m. next day and on the basis of his statement Sariya P.S. Case No. 265 of 1992 was registered under various sections including Sections 323, 324 of the Indian Penal Code. However he admitted that he could not get himself examined before that. He has admitted vide para 7 that the Khalihan was situated at 50 yards from plot No. 100 claimed by the informant party. This witness has admitted vide para 11 that he has not seen the deceased Chhakan Mahto on the date of occurrence which becomes much clear with his assertion where he names nine persons except the deceased who have arrived at his Khalihan. According to him he was given stitched during treatment along with his three brothers but no such injuries report has been brought on record. The deceased Chhakan Mahto admittedly died due to head injuries caused by hard and blunt substance vide Ext. 1 resulting in compound depressed fracture of parietal bone left side of head. Therefore the appellant and defence has failed to support the suggestion that Chhakan Mahto might have received the fatal injury during exchange of blows and brick batting as per their defence case.

7. As against this consistent version of prosecution witnesses" names the appellant as the assailant who gave blow with axe hard and blunt substance when Chhakan Mahto arrived at the spot after an alarm raised by the injured persons. The prosecution witnesses P.W. 1, 2, 3, 4, 5, and 6 have remained consistent regarding blow given by the appellant on the head of Chhakan Mahto. Minor contradictions pointed out by the learned Counsel for the appellant cannot be of much help because of the consistent story produced before the trial court by eye witnesses of the occurrence. The ocular evidence is further supported by the post mortem report in which the doctor P.W. 7 has opined that single injury found on the dead body caused by hard and blunt object resulted in his death. These aspects have been considered by the learned trial court in details vide para 17 and 18 of the judgment. We do not find any material on record to disagree with the finding of the learned trial court.

8. The learned Counsel for the appellant Sri Deo submitted that in the above facts and circumstances, the learned trial court should not have held the

appellant guilty u/s 302 of the Indian Penal Code. According to him when no repeated blow was alleged neither found on the deceased, the appellant could not be held guilty u/s 302 of the Indian Penal Code. It is rightly averted that in such circumstances the death caused with single blow stand covered u/s 304 of the Indian Penal Code and the appellant deserves some consideration regarding quantum of punishment.

9. The learned APP opposed this contention on the grounds that the appellant having knowledge that such assault by tangi might have resulted in death deserves to be sentenced u/s 302 of the Indian Penal Code.

10. After going through the material on record it is apparent that the appellant Ganga Mahto gave single blow on the head of the deceased Chhakan Mahto due to which he fell down. The evidence on record does not suggest that after this the appellant tried to assault the deceased further. The medical report also supports this contention. In such circumstances, we find that the contention raised on behalf of the appellant appears to be reasonable. The circumstances in which the occurrence took place also shows that the deceased arrived at the place of occurrence when assault was going on, as such, knowledge and intention to cause his death is lacking on part of the appellant.

11. In the facts and circumstances, mentioned above, the conviction of the appellant is altered to u/s 304 part II of the Indian Penal Code and for that the appellant is sentenced to R.I. for 10 years. In the result, this appeal is disposed of in terms indicated above.

12. The office is directed to send a copy of this judgment along with the original case records to the court concerned for information and needful.