
(2007) 02 JH CK 0037
In the Jharkhand High Court

Guna @ Gunadhar Mahato and Others	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 324, 34

Citation : (2007) 3 JCR 461

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. All the appellants stand convicted for the offence punishable u/s 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 250/- each, in default thereof to further undergo simple imprisonment for fifteen days and appellant Guna @ Gunadhar Mahato stands further convicted u/s 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months, by the 12th Additional Sessions Judge, Dhanbad in Sessions Trial No. 280 of 2000. However, the sentences were ordered to run concurrently.

2. Factual matrix leading to this appeal are that one Paltan Mahto was sitting outside his house situated in Mauza Bhela Tanr, Police Station-Barwadda, Govindpur, district-Dhanbad in the afternoon of 16.4.1999, when all of a sudden, the appellants arrived armed with hockey stick and lathi, and started assaulting him. The deceased raised alarms on which, informant (PW 7) Chhumia Devi, her daughter (PW 2) and daughter-in-law (PW (3) rushed out to find that the appellants were assaulting indiscriminately Paltan Mahto with hockey stick and lathi. The informant tried to intervene in which she also received injuries on her right arm. According to the informant, all the appellants continued assaulting him till he died. She further alleged that after death of her husband, appellants put a gloss with blood on their forehead and fled away. She further alleged that this incident has taken place because of dispute in partition of the ancestral

properties with the appellants who were nephew of the deceased.

3. The informant was examined by Barwadda (Govindpur) Police at 6.45 p.m., same evening at her house in presence of dead body of Paltan Mahto and Govindpur Police Station Case No. 102 of 1999 under Sections 323/302/34 of the Indian Penal Code was registered against the four appellants and police started investigation. The police prepared the inquest report in the morning of 17.4.1999, arrested the appellants and sent the dead body for post-mortem examination. The police finally submitted charge-sheet against all the appellants. The trial of the appellants was taken-up after commitment by the trial Court, framing charge against all of them under Sections 323/302/34 of the Indian Penal Code. The appellants pleaded not guilty and claimed false prosecution. According to defence, they had no role in death of Paltan Mahto and they have been implicated falsely in this case due to previous enmity. However, the learned trial Court after examining the witnesses found and held all of them guilty under Sections 324/302/34 of the Indian Penal Code and sentenced them as mentioned aforesaid.

4. The present appeal has been preferred mainly on the grounds that the learned trial Court has accepted the version of only interested witnesses, who were tutored and apparently not trust worthy. Mr. A.K. Kashyap, learned Counsel appearing on behalf of the appellants, stressed before us that the witnesses examined by the prosecution have contradicted each of them on material points. It is further asserted that the police has arrived at the place of occurrence on receiving information, which should have been treated as fardbeyan in this case. However, later on, false and concocted version of the occurrence was brought on record in connivance of the police implicating the appellants. In this context, it was pointed out that the alleged time of occurrence was at 3.00 p.m. whereas registration of the case was at 10.00 p.m. after recording the statements of PW 7 at 6.45 p.m. In this context our attention was drawn towards the distance of the police station from the place of occurrence only two kilometers. Learned Counsel further pointed out that even at the time of recording of the fardbeyan, the Investigating Officer did not prepare the inquest report on fake plea that due to darkness he could not prepare the inquest report. Therefore, a reasonable doubt is created upon the prosecution version. He further pointed out that the Investigating Officer has conducted the investigation in most perfunctory manner without ascertaining the motive, previous enmity and dispute for partition of ancestral properties. According to the learned Counsel, the incident has taken place in different manner in Bhagta Mela in which large number of people assembled, consumed liquor and there may happen free fight resulting in his death. Learned Counsel further pointed out that the son and nephew of the deceased have preferred not to come forward as witness in this case and further in absence of any injury report of the informant, the prosecution version becomes doubtful.

5. We have anxiously considered the submissions made on behalf of the

appellants along with the materials on record. It is admitted fact on record that the incident as alleged took place at 3.00 p.m. and the police registered the case after seven hours when the police station is only at two kilometers from the place of occurrence. This is also come on record that though the case was registered on 16.4.1999, First Information Report was received at the office of the Chief Judicial Magistrate, Dhanbad on 19.4.1999. In this context, the evidence of investigating officer (PW 8) is relevant. Shri Ezora Barda, S.I., Barwadda Police Station, has stated in his examination-in-chief that on 16.4.1999, he received information that two persons have fought in village Bhelataur resulting in death of one of them. He enters the information vide Station Diary Entry No. 418 and arrives at the place of occurrence at about 6.40 p.m. He reaches the house of the informant to find the dead body of Paltan Mahto. Thereafter he records the statement of PW 7, the informant, and describes the place of occurrence vide paragraphs-9 to 10. However, this witness has admitted in cross-examination vide paragraph-14 that about fifteen persons were available at the place of occurrence, but he did not prepare the inquest report due to lack of light. He neither seized the blood fallen at the place of occurrence nor he seized the clothes from the dead body. He admitted in paragraph-17 that he has not mentioned regarding the lands for which dispute continued between the parties nor he ascertained on which matter, the dispute continued. He admitted in paragraph-21 that he remained at the place of occurrence from 6.45 p.m. to 11.15 p.m. According to him, he has left the dead body at the place of occurrence and prepared it in the morning on 17.4.1999. He denied that the dead body was brought to police station by the relatives by the deceased and he recorded the statement of informant at the police station itself.

6. In this context, the admission of PW 1 Dwarika Mahto, PW 5 Motilal Gope and PW 6 Rishi Mahto are relevant. PW 1 is a resident of another village who has informed by Kishan Mahto at about 5.00 p.m. that his "mama", the deceased, was killed. He is a hearsay witness about the occurrence. PW 4 Suresh Mahto is nephew of the deceased. He is also a hearsay witness of the occurrence. According to him, he was sleeping at the time of occurrence and could learn the incident when her mother woke him up. He further described the house of the deceased having a boundary wall and grill gate outside, but the dead body was laying outside the boundary on road. He further admitted in cross-examination that appellant Puran Mahto was the son-in-law of the brother of the deceased and he has no enmity with the deceased. According to him, he has seen the deceased and the appellants separate since long and he could not say for which land the dispute was continued PW 5 and PW 6 have stated that they saw the dead body of Paltan Mahto in the police station where they signed over the inquest report as witness and proved their signatures as Exts. 1 and 1/1 on the inquest report. These witnesses have admitted in cross-examination that they have not gone to the house of the deceased. He further admitted that he saw the appellants going along with Gopal Mahto to police station at about 10.00 p.m. He reaches to the police station on next day at 9.00 a.m. to sign over the inquest

report. PW 6 denied to have any knowledge about the occurrence but he has signed over the inquest report. Gopal Mahto is son of the deceased, who preferred not to appear as witness in this case.

7. PW 2 Mamta Devi and PW 3 Karmi Devi, daughter and daughter-in-law of the deceased supporting the informant PW 7 have asserted that on hulla they went out to the house to find the appellants assaulting the deceased. According to PW 2, the neighbourers arrived at the place of occurrence after the appellants have fled away. According to her version, the appellants have also assaulted the informant when she tried to intervene resulting in fracture of her right hand. She further admitted vide paragraph-12 that none of the villagers except the three females gave any statement before the police. She further admitted that the fardbeyan was recorded after arrival of PW 1 from Rajganj. She admitted vide paragraph-15 that before this occurrence some dispute was going on but it has subsided. PW 3 similarly admitted that when PW 7 tried to intervene, she was also assaulted. According to her admission, the documents related to dispute were available with them, but it has not been produced in the Court neither this fact has been asserted by her husband Gopal Mahto before the police or trial Court. She admitted that on the date of occurrence Bhagta Mela was going on in the village and villagers used to drinks wine as "prasad" PW 7 the informant, supporting her fardbeyan and admitted in examination-in-chief that she could not say for which land the dispute was continued since long. However, she admitted at the same breath that the deceased and family of the appellants were separate for last twenty years in mess and residence and there was no litigation pending since before vide paragraph-5. She admitted in paragraph-11 that all the neighbourers did not come inspite of their hulla at the place of occurrence.

8. PW 9, Dr. Shailendra Kumar, examined the dead body at 1.00 p.m. on 17.4.1999 and found a number of lacerated wounds resulting in death due to fracture of skull bone along with a number of abrasions. According to him, the death was caused by hard and blunt substance like lathi and rod. He admitted in cross-examination vide paragraph-13 that the deceased has not taken food within 4.00 hours prior to his death. Learned Counsel for the appellants criticised this admission by saying that the prosecution version is otherwise. According to the informant, the deceased has taken his food after 12.00 and was sitting outside when the occurrence took place at 3.00 p.m. Therefore, there is major contradictions in the version of the prosecution and opinion of the doctor causing a grave doubt upon the prosecution version.

9. We have considered the submissions along with the materials on record. The prosecution has not been able to prove beyond doubts that actually any dispute was going on between the deceased and the appellants for any ancestral property or Immovable property for long compelling the appellants to commit this offence. The prosecution has not brought on record any circumstance, which infuriated the appellants all of a sudden to commit the murder for the deceased on 16.4.1999 particularly in view of admission of PW 2, PW 3 and PW 7 that the

dispute was pending since long though not supported by any material on record. We further find that the time of death alleged in the fardbeyan at 3.00 p.m. is not corroborated with the opinion of PW 9 who did not find that the deceased has taken meal within 4.00 hours prior to his death. The admission of PW 1, PW 4, PW 5 and PW 6 that they only came to know about the occurrence from some one is not corroborated by any one who informed regarding the incident. PW 4, PW 6 and PW 6 are neighbours of the informant, but they admitted that they came to know about the occurrence when police arrived. They have admitted that they signed over the inquest report in the police station. This fact further creates a reasonable doubt that they have not seen the dead body at the place of occurrence. The investigating officer of this case has admitted that the inquest report was not prepared in the evening of 16.4.1999. The explanation submitted by him that he could not do in absence of proper light is not acceptable because in mid April evenings are not very dark at about 6.45 p.m. This circumstance that the dead body was lying for nearly 12.00 hours in the open has also not been explained particularly when the police arrives at the place of occurrence, records the fardbeyan registers the case, but does not care to prepare the inquest report. The availability of light at 6.45 p.m. in a populated village just in front of the house of the informant is very much likely. In that circumstance, the explanation of the investigating officer is not acceptable. Our views are further strengthened with the fact that the fardbeyan was received in the Court of Chief Judicial Magistrate, Dhanbad only on 19th of February 1999 and all these facts along with the fact of non-examination of Gopal Mahto, son of the deceased and other probable witnesses of neighbourhood creates a reasonable doubt on the prosecution version.

10. The appellants have already remained in custody from April 1999. The prosecution has not been able to prove beyond all reasonable doubts that they have participated in the alleged assault on deceased Paltan Mahto in the manner, at the time and place disclosed by the informant on 16.4.1999. In such circumstances, we find that the prosecution has not been able to prove beyond doubts that these appellants have assaulted and caused death of Paltan Mahto in the manner alleged by the prosecution. As such, we hold that the present appeal has got merit in it and deserves to be allowed.

11. In the result, the present appeal is allowed. The appellants are found not guilty of the charges levelled against them and accordingly, acquitted from the charges. The judgment and order passed by the trial Court convicting the appellant are hereby set aside. As the appellants are in jail, they are directed to be set free forthwith, if not wanted in any other case.