
(2020) 01 JH CK 0087

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No.885 Of 2006

Hindu Munda And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 302, 304, 324

Citation : (2020) 01 JH CK 0087

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Shailesh Kr. Sinha, Vandana Bharti

Final Decision : Allowed

Judgement

1. Heard Mr. Shailesh Kr. Sinha, learned counsel appearing for the appellants and Mrs. Vandana Bharti, learned A.P.P. appearing for the State.

2. This appeal is directed against the judgment of conviction dated 29.04.2006 and order of sentence dated 01.05.2006 passed by Shri S.N. Prasad,

Additional Judicial Commissioner-II, Khunti in S. T. Case No.227 of 1994, whereby and whereunder the appellants have been convicted for the

offence under Section 304 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five (05) years.

3. The appellants have been charged under Section 302 of the Indian Penal Code and further they along with Budhu Munda and Lado Munda have

been also charged under Section 149 of the Indian Penal Code and finally the appellants have been convicted under Section 304 of the Indian Penal

Code by judgment of conviction dated 29.04.2006. They have been sentenced to undergo rigorous imprisonment for five (05) years.

4. The FIR has been lodged through the written statement of the informant

namely Ramjeevan Munda (P.W.-2) on 09.08.1993 which has been registered as Arki P.S. Case No.33 of 1993 under Sections 147, 148, 149, 324 and 307 of the Indian Penal Code.

5. As per the FIR, the accused persons were forcibly ploughing the disputed land to which the deceased Ajamber Singh Munda (father of the informant) protested, upon which all the accused persons had assaulted him with lathi on his neck. As a result he fell down and became injured. The matter was reported to the informant by Ranthu Munda aged about 14 years. The informant went at the place of occurrence and saw that his father was lying injured on the ground and accused persons were fleeing away. The father was first taken to the police station and after registering the case he has been referred to Arki Hospital and subsequently to RMCH where he died during the course of treatment after two days.

6. As per the FIR the injured person firstly brought to home and the police came there and took statement. Thereafter the injured was taken to the police station and further to Arki Hospital and subsequently to RMCH. After completion of investigation all the accused persons have been charge-sheeted under Sections 147, 148, 149 and 307 of the Indian Penal Code. Cognizance was taken and the case has been committed to the Court of Sessions. The charge has been framed under Section 302 of the Indian Penal Code against all the accused persons and under Sections 302 and 149 of the Indian Penal Code against Budhu Munda and Lado Munda. All the accused persons pleaded not guilty and claimed to be tried. On completion of the trial, two accused persons Budhu Munda and Lado Munda have been acquitted from charges except the present appellants who have been found guilty under Section 304 of the Indian Penal Code. They have been sentenced to undergo rigorous imprisonment for five (05) years against which the present appeal has been preferred.

7. The prosecution has examined altogether six witnesses to support the allegation.

P.W.1-Trilochan Pramanik has been examined on 29.07.1999 and Guru Dayal Munda was examined on 09.08.2001. Both have been numbered as prosecution witness no.1. According to Guru Dayal Munda, he was grazing his cattle along with Ranthu Munda and Ajamber Singh Munda, and Hindu Munda was ploughing field and other accused persons were present there. They

have assaulted victim Ajamber Singh Munda. Etwa Munda and Hindu Munda assaulted him with lathi. As a result, victim Ajamber Singh Munda fell down.

P.W.2-Ramjeevan Munda (the informant) has deposed that he got the information about the incident by Ranthu Munda and went to the place of occurrence and saw that accused persons were fleeing away. His father Ajamber Singh Munda was in injured condition with head injury and there was bleeding from his head. His father was taken to the police station, thereafter he was taken to hospital and further referred to RMCH where he subsequently died in course of treatment.

P.W.3-Triloki Manjhi has also deposed that he got the information from Ranthu Munda and on reaching at the place of occurrence, he saw Ajamber Singh Munda (the deceased) lying on ground and accused persons were fleeing away. As per his deposition all the accused persons were armed with lathi.

P.W.4-Tulsi Hajjam has also reached on hearing alarm and has deposed the same line.

P.W.5-Ranthu Munda aged about 14 years who has claimed to be an eye witness. As per his deposition, while he was grazing his cattle along with

Ajamber Singh Munda and Guru Dayal Munda, the accused persons assaulted Ajamber Singh Munda. Etwa Munda and Hindu Munda assaulted him

with lathi on the neck and head. As a result he became senseless. The matter has been reported to Ramjeevan Singh Munda (the informant) and the deceased was firstly taken to home and thereafter to the police station then he was admitted to the hospital. The reason of the dispute is land dispute.

In cross-examination he has admitted at para-20 that there is some criminal cases pending between the parties. In one of the cases this witness was behind the bars.

8. Learned counsel for the appellant has submitted that as per the evidence laid by the prosecution, none has seen the occurrence except Ranthu

Munda (P.W.5) upon whose information they reached at the place of occurrence and thereafter FIR has been registered against the appellants. All

the witnesses have claimed that they have seen the accused persons fleeing away. Court below has not found them guilty under Section 149 of the

I.P.C. P.W.5 is the inimical witness who has been behind the bar due to case

instituted by the appellants against him. In his deposition he has claimed that he has also sustained injury but such statement has not been given in the FIR. Neither Investigating Officer nor Medical Officer has been examined. All the witnesses have made allegation against the persons that all accused were seen fleeing away and the lathi blow has been given to the deceased by all accused persons.

9. Specific overt act has been alleged by P.W.5 who is inimical to the appellants. In the absence of any corroboration and non-examination of the I.O.

and Medical Officer, the conviction of the appellants cannot be sustained as there is cloud of doubt. It is settled law that benefit of doubt has to be extended to the accused.

10. Per contra learned APP has supported the judgment of conviction and argument has been advanced that all the accused persons has been seen fleeing away and the deposition of the witnesses are consistent to this point. There is a land dispute between the parties i.e. motive behind the incident.

Non-examination of the I.O. and the Medical Officer cannot be used in favour of the accused as it is settled law that unless prejudice is caused to the

convict it is not fatal for prosecution. In the present case, eye witness has accounted that accused persons were fleeing away from the place of

occurrence. One of the witnesses i.e. P.W.5 has deposed that he has seen the lathi blow by the appellants to the deceased.

11. The appellants have not been charged by a taking add of Section 147/34 of the I.P.C. and as such individual overt act has to be considered for the

purpose of conviction. In the absence of examination of I.O. and the Medical Officer, the injury which has been triggered death cannot be ascertained.

12. From perusal of Ext.2, it appears that there are three injuries present. All the injuries have been caused either by single person or by three

different persons is not clear. P.W.5 has deposed against these appellants is inimical to them.

In the absence of corroboration, his version cannot be basis for conviction.

13. From the discussion made above and considering the entire material available on record, this Court finds that the prosecution has failed to prove the charges levelled against the appellants.

Consequently, the conviction of appellants is not sustainable. The judgment of conviction dated 29.04.2006 and order of sentence dated 01.05.2006

passed by Shri S.N. Prasad, Additional Judicial Commissioner-II, Khunti in S. T. Case No.227 of 1994, is, hereby, set aside. The appeal stands

allowed.

The appellants are already on bail, they are discharged from the liability of their bail bonds.