
(2006) 01 JH CK 0030

In the Jharkhand High Court

Case No : Criminal Appeal No. 223 of 1988 (P.)

Jatlu Mahato and Others

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 324, 325, 34

Citation : (2006) CriLJ 2503 : (2006) 2 JLJR 35 : (2006) 2 EastCriC 101 :
(2006) 1 BLJR 360 : (2006) 2 AIRJharR 12

Hon'ble Judges : N. Dhinakar, C.J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : Rajan Raj, Amicus Curiae, for the Appellant; T.N. Verama, APP, for the Respondent

Final Decision : Allowed

Judgement

1. The appellants, who are A-1 to A-10, were put on trial before the Additional Sessions Judge, Godda in Sessions Case No. 234 of 1988. They were charged under Sections 302/34, IPC as also u/s 324 and 325 IPC on the allegation that at 8.00 a.m. on 9-6-1984, they, in furtherance of their common intention, caused injuries to Sahdeo Mahto (PW.1), Raghunath Mahto (PW.2), Ram Charitra Mahto (PW.3), Harihar Mahto (PW.4), Basuki Mahto (PW.6), Premlal Mahto (PW.7) and that during the course of the said transaction, they caused injuries to Upendra Mahto resulting in his death. The trial Judge, on the basis of oral and documentary evidence, found all the appellants guilty and sentenced each one of them to imprisonment for life. The present appeal is against the said conviction and sentence.

2. The learned trial Judge also found appellant Raghunath Mahto (A-2) guilty u/s 325 IPC and sentenced him to suffer two years" R.I., while he found appellant Nandkeshwar alias Nankishore Mahto (A-9) guilty u/s 324, IPC for which he was sentenced to suffer imprisonment for one year.

3. The facts of the case are:

PW.1 Sahdeo Mahto, PW.2 Raghunath Mahto, PW.3 Ram Charitra Mahto, PW.4 Harihari Mahto, PW.6 Basuki Mahto, PW.7 Premlal Mahto, PW.9 Gaur Mahto, PW.11 Shanti Devi as well as the deceased Upendra Mahto were resident of the same village in which the accused persons were residing. There was a Mahua tree on the ridge of the land which was in enjoyment of the two parties. The accused party as well as the deceased party were claiming ownership and right of enjoyment over the same on account of which there used to be quarrel between the parties.

4. At about 8.00 a.m. on 9-6-1984, PWs.1 to 7, 9, 11 and the deceased Upendra Mahto were plucking Mahua flowers from the tree. The accused went there, questioned them for plucking the flowers and thereafter started attacking the prosecution witnesses and the deceased. Accused Raghunath Mahto gave a blow with wooden portion of Garansa on the right hand of PW. 1 Sahdeo Mahto (informant) followed by Khirdhari Mahato (A-3) who also assaulted the prosecution witnesses. Thereafter A-3 Khirdhari Mahato instigated other accused to attack the prosecution party. On being instigated, Gunadhar Mahto (A-8) and Nand Kishore Mahato (A9) started throwing arrows towards the tree where the prosecution party was standing. The witnesses climbed down the tree and A-2 Ragnath Mahto caused injury on the deceased Upendra Mahto with Garansha on his head. Upendra Mahto fell down. Jatlu Mahato (A-I) inflicted two Garansha blows on his left arm leading to bleeding injuries. A-8 Gunadhar Mahato assaulted Harihari Mahato (PW.4) with arrow on his right rib portion and A-9 Nand Kishore Mahato assaulted Raghunath Mahto (PW.2) on his left rib portion. The other accused attacked PW. 1 and other witnesses. Thereafter, all the accused went away from that place. The occurrence was witnessed by PWs.1 to 4, 6, 7, 9 and 11. Thereafter PW. 1 along with the injured went to Godda (Town) Police Station from where they were referred to Government Sadar Hospital, Godda. On being referred, the injured witnesses appeared before the Medical Officer (PW.10).

5. PW. 10 examined PW. 1 Sahdeo Mahto at 3.15 p.m. and he found the following injuries:

- i. Bruises 3 1/2" x 1 " obliquely on the back of left forearm midway over a swelling in hole forearm with fracture of underlying bone.
- ii. Bruises 2 1/2" x 1" obliquely on the interior aspect of left thigh midway over a swelling.

The doctor issued Ext. 2/2, the wound certificate for the injuries noted by him on PW.1. Thereafter, at 3.20 p.m. PW.3, Ram Charitar Mahto was examined by PW. 10 and the following injuries were noted by him:

- i. Lacerated wound 3 1/2" 1/2" x scalp deep obliquely on the occipital part of skull midway.

ii. Bruises with swelling 1" x 1" obliquely on the right hand near index and middle finger.

The doctor issued injury report (Ext. 2/1). Thereafter, at 3.30 p.m. P.W. 10 examined P.W. 4 Harihar Mahto and found the following injuries:

i. Lacerated wound 3 1/2" 1/2" scalp deep obliquely on the occipital part of skull midway.

ii. Lacerated wound 1/2" x 1/2" x 1/4" obliquely on the left parietal part of skull midway.

iii. Incised wound 1" x 1/2" x 1/4" obliquely on the postero lateral aspect of the right little finger.

iv. Incised wound 1/2" x 1/4" x 1/2" obliquely on the right flank of abdomen midway.

v. Bruise with laceration 1" x 1/4" obliquely on the lateral aspect of right arm upper part.

The doctor issued Ext.2, the injury certificate, for the injuries noted by him on PW.4. Thereafter, at 3.20 p.m., the doctor (PW.10) examined PW.2 Raghunath Mahto and found one incised wound 1/2" x 1/4" x 1/2" transversely on the left flank of the abdomen midway. He issued injury report (Ext.2/3).

Thereafter, PW. 10 examined PW.7 Premlal Mahto at 3.35 p.m. and found the following injuries :--

i. The incised wound 1" x 1/4" transversely on the right face near mallor prominence.

ii. Bruises 6" x 1/2" obliquely on the right side chest upper part over a swelling.

iii. Two lacerated wound 1/2" x 1/2" in size on the middle aspect on the left arm lower part.

The doctor (PW. 10) issued injury report (Ext.2/4) for the injuries noted by him on PW.7.

Thereafter, the Medical Officer (PW. 10) examined PW.6 Basuki Mahto and found the following injuries :--

i. Bruises with swelling 2 1/2" x 1" obliquely on the anterior aspect of right thigh midway.

ii. Bruises with swelling 1 1/2" x 1" obliquely on left parietal part of skull.

iii. Bruises with swelling 1" x 1" obliquely on the right parietal part of skull.

The doctor (PW. 10) issued injury report (Ext.2/5) for the injuries noted by him on PW.6.

6. In the meantime, PW. 12 Dilkeshwar Singh, Asstt. Sub Inspector of Police, Godda reached the hospital and recorded the fardbeyan of P.W.1 at 8.45 p.m. The same stands marked as Ext. 4. On returning to the Police Station, First Information Report was prepared which stands marked as Ext.6.

7. It is the further case of the prosecution that at about 11.30 a.m., the 1st accused Jatlu Mahato appeared before the Police Officer and gave fardbeyan which stands marked as Ext. C on the basis of which FIR was prepared which is Ext. E. A crime was registered being Crime No. 103/84.

8. It is the further case of the prosecution that A-1 and A-2 were also referred to the hospital by the Police Officer as they had injuries on their persons. The doctor examined A-1 Jatlu Mahato at 11.30 a.m. and found the following injuries:

- i. 6 bruises 4 1/2 x 5", 6" x 1" incised obliquely on the back of whole of the left side chest over a swelling.
- ii. 5 bruises 4 1/2"x 5 1/2"x 1" incised obliquely on the back of whole of right side chest over a swelling.
- iii. Lacerated wound 1" x 1/2" x 1/2" obliquely on the occipital part of skull.
- iv. Bruises 4 1/2" x 1" obliquely on the back right elbow over a swelling.
- v. Bruises 1/2" x 1/2" obliquely on the lateral aspect left eye over a swelling.

9. PW.10, the Medical Officer, also examined A-2 Raghunath Mahato at about 11.45 a.m. on whom he found the following injuries.

- i. Lacerated wound 1 1/2" x 1/2" and scalp deep obliquely on the right parietal part of scalp.
- ii. Lacerated wound 2" x 1/2" scalp deep obliquely on the left parietal part of skull W lateral to midline.
- iii. Lacerated wound 1" x 1/2" scalp left side 1/2" lateral to midline.
- iv. Incised wound 1/2"x 1/4" x 1/2" obliquely on the back of left forearm midway.
- v. Bruises 2 1/2" x 1/2" obliquely on the left chest upper part over a swelling in front.
- vi. Bruises 2" x 1/2" obliquely on the right chest in front upper part over a swelling.

The doctor reserving his opinion as regards injuries Nos. 1 and 2 found on the person of A-1 in his injury report, also found injury on A-2 Raghunath Mahato and issued injury report (Ext A & A/1). In his opinion the injuries were simple in nature.

10. The Investigating Officer took up the investigation in both the crimes as case and counter case, proceeded to the scene of occurrence and conducted inquest

over the dead body of Upendra Mahto. The inquest report is Ext.9. Thereafter, he sent the dead body for post mortem examination.

11. On receipt of the requisition and the dead body, PW. 10 conducted autopsy and he found the following injuries:

- i. Incised wound 5 1/2" x 1 1/2" x soft tissue and bone deep transversely on the left arm midway with fracture of underlying bone and cutting the soft tissue.
- ii. Incised wound 4 1/2" x 1/2" x soft tissue and bone deep transversely on the left arm midway with fracture of underlying bone and cutting the soft tissue below injury No. 1.
- iii. Incised wound 2 1/2" x 1/2" x scalp deep vertical on the left parietal part of skull 1" lateral to midline.
- iv. Bruises 1" x 1/2" obliquely on the right side of the neck lower part.
- v. Bruises 3 1/2" x 1/2" x obliquely on the right of flank of abdomen near waist.
- vi. Bruises 3 1/2" x 1/2" x obliquely on the left flank of abdomen upper part near rib.

The doctor issued Ext.3, the post mortem certificate with his opinion that the death is on account of shock and haemorrhage due to the injuries.

12. After the completion of the investigation, final report was filed.

13. On being questioned u/s 313, Cr. P.C. on the incriminating circumstances appearing against the appellants, they denied the allegation and pleaded innocence.

14. Learned counsel appearing for the appellants, submits that the appellants having suffered injuries and they having gone to the Police Station even at 11.30 a.m. on the date of incident and given the complaint against the prosecution party, the trial Court ought to have acquitted the accused in view of the conduct of the accused in not going to the Police Station immediately and laying a complaint belatedly and also in view of the total denial of the prosecution version about the injuries found on A-1 and A-2. He submits that the witness have come out with a false version by not giving any explanation for the injuries found on the accused and the fardbeyan (Ext. 4) was also belatedly recorded and it was received by the Magistrate one week after i.e. on 12-6-1984. He, therefore, submits that the fardbeyan (Ext.4) must have been prepared at a later point of time after due deliberation by the prosecution witnesses.

15. On the above contention, we have heard Mr. T.N. Verma, learned Counsel appearing for the State.

16. The fact that the deceased Upendra Mahto died on account of homicidal violence and that the witnesses suffered injuries for which they were examined by PW. 10 are the facts beyond dispute. Similarly it is also not in dispute that A-1

and A-2 suffered injuries during the course of the same transaction and that they were examined by the said doctor even in the morning. It is also not in dispute that the complaint given by the 1st accused was registered at the Police Station at 11.30 a.m. as P.S. Case No. 103/84 and that the complaint given by PW. 1 was registered at 8.45 p.m. as P.S. Case No. 104/84. The above facts, therefore, show that the occurrence took place at about 8.00 a.m. on 9-6-1984 during which not only the deceased and the witnesses suffered injuries, but also the two accused who were arrayed as A-1 and A-2 also suffered injuries.

17. In this background, it is for the witnesses to explain as to how the accused suffered injuries. PW3 was specifically questioned as regards the injuries noted by the doctor (PW.10) on the persons of A-1 and A-2. PW.3 had no qualms to come out with an answer that the accused did not suffer any injury at the time of the occurrence and that the prosecution witnesses alone suffered injuries at the time of occurrence. He went on to admit that he did not see any injury on A-1 and A-2. The other witnesses, who were examined as eyewitnesses did not also offer any explanation for the injuries found on A-1 and A-2 by the doctor. It is not in dispute that both the accused appeared at the Police Station at 11.30 a.m. and gave a complaint (Ext.C) and, thereafter, they were referred to the hospital for treatment by the Police Officer. It is, therefore, clear that A-1 and A-2 were first to reach the Police Station to lay the complaint regarding the incident and that they were also referred to the hospital as they had injuries on their persons.

18. In this backdrop, it is for the prosecution to explain as to how the accused suffered injuries. As we have noted earlier. the prosecution did not explain any of the injuries found on the accused and on the contrary, it totally denied that the accused suffered injuries at the hands of the witnesses.

19. In the case of Lakshmi Singh and Others Vs. State of Bihar, the Supreme court held as follows:

In a murder case, non-examination of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(i) the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable:

(iii) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

20. The Supreme Court went on to observe that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested and inimical

witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

21. When we apply the above principle to the facts of this case, we find that it squarely applies to the case in hand as the witnesses did not explain the injuries on A-1 and A-2 and they also denied the said fact. We are, therefore, of the view that the witnesses were suppressing the genesis and origin of the case when they gave evidence in the case. In that view of the matter, we find it difficult to accept the evidence of the witnesses and therefore reject their evidence.

22. In the result, this appeal is allowed and conviction of the appellants is set aside. They are acquitted of the charges. It is reported that the appellants-accused are on bail. They are discharged from the liability of their bail bonds.