
(2006) 07 JH CK 0132
In the Jharkhand High Court

Judhistir Mahato and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2006) 4 JCR 622

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—Both the appellants stand convicted for the offence u/s 307 of the Indian Penal Code and sentenced to serve rigorous imprisonment for seven years, and appellant No. 2 Parikhith Mahato stands further convicted for the offence u/s 3 of the Explosive Substance Act and sentenced to serve rigorous imprisonment for seven years, by the 3rd Additional Sessions Judge, Dhanbad in Sessions Trial No. 153 of 1986.

2. Brief facts leading to this appeal are that on 5th of November. 1982. the informant and her family members had gone to harvest the paddy crop standing in Mauza-Gundligorha, P.S. Chandankiary, District Dhanbad. According to the informant, the appellant along with seven others came there armed variously and objected on harvesting the paddy. Further it is stated that when her husband Bidyadhar Mahato asserted that he has right to harvest the paddy, all the accused persons fell upon him with arms in their hands. They further assaulted Mahanand Mahto. It is alleged that during this occurrence appellant Parikhith Mahato threw a country-made bomb and injured many persons.

3. The matter was reported to Chandankiary Police, on the basis of which, Chandankiary P.S. Case No. 109 of 1982 under various sections including Section 307 of the Indian Penal Code and Sections 3/5 of the Explosive Substance Act. The Police finally submitted charge-sheet against the nine accused persons under

Sections 147, 148, 323, 324 and 307 of the Indian Penal Code and Sections 3 and 5 of the Explosive Substance Act. The case was committed for trial by the Court of Sessions where Additional Sessions Judge VII, Dhanbad framed charges against the accused persons including the appellants u/s 307/323 of the Indian Penal Code. Later on, charge was further framed under Sections 307/149 and 323/149 of the Indian Penal Code on 10.1.1991 by the Sessions Judge, Dhanbad and finally Section 3 of the Explosive Substance Act was added on 14.6.1994 by Shri R.B. Gupta, 3rd Additional District Judge, Dhanbad against appellant Parikhith Mahato. The trial Court after examining the witnesses found and held only the appellants guilty u/s 307 of the Indian Penal Code and sentenced them to serve rigorous imprisonment for seven years, acquitting all other seven accused persons from all the charges. The trial Court further sentenced appellant Parikhith Mahato to serve rigorous imprisonment for seven years for the offence u/s 3 of the Explosive Substance Act.

3. The present appeal has been preferred on the grounds that the trial Court has committed mistake of fact as well as law by not believing the story of self-defence brought on record by the appellants. Further it is stated that the whole conviction is based upon interested witnesses and there are major contradictions, having materially discarded the prosecution version. It is asserted that all the injuries found on the injured persons were simple in nature, which does not attract any sentence u/s 307 of the Indian Penal Code. It is further asserted that the omnibus allegations have been believed in spite of the fact that the informant party has assaulted the appellants and tried to harvest the paddy forcibly. Therefore, the appellants also deserve to be acquitted of the charges.

4. In the present facts, it is undisputed fact that the alleged occurrence took place for harvesting paddy crops on a particular piece of land. The defence brought on record certain documents regarding Plot No. 1263 and 1375 claiming possession over the plot from where the informant tried to harvest DW-1 is one of the co-villagers where DVV-2 has brought on record six rent receipts (Ext. A to Ext. A/6 series). This has been discussed by the learned trial Court vide paragraph No. 17 in details. It further mentions that the prosecution has not been brought on record any document regarding the land on which paddy was being harvested, but orally asserted that Plot No. 1375 of Khata No. 10(110) was being harvested. In the present facts, when particular plot of land is being claimed by both the parties and defence bringing on record some documents and the prosecution asserting on mere oral submission, a reasonable doubt arises regarding the place of occurrence where harvesting was being done. The defence from the very beginning asserting that the informant party has trespassed and tried to harvest the paddy for which occurrence took place. I further find that PW-8, PW-9 and PW-10 are related and PW-17, the Investigating Officer only submitted charge-sheet as the investigation has already been completed. The Investigating Officer, Ram Lakhan Singh, has not been examined by the prosecution. The injuries found on PW-4 were simple in nature.

5. PW-1, the informant admitted vide paragraph No. 8 that the assault took place in the field of Fakir Mahto. PW-2 Mahanand Mahto asserted that they have gone to harvest the paddy in plot No. 1375 having an area of one acre, but he could not say from which side of plot, they were harvesting the paddy. PW-3 identified only two of the accused persons and could not say from which plot she was cutting paddy. She further admitted vide paragraph No. 9 that the accused persons claimed the land and paddy standing thereon. PW-4 is the husband of the informant, who has admitted in cross-examination that he cannot say the area, from which the paddy was being harvested. He asserted vide para 18 that he has got papers of the land, but did not produce it in the Court whereas the defence has produced some papers. PW-5 and PW-6 are hearsay witnesses of the occurrence. PW-7 has admitted that he cannot say who assaulted whom. PW-8 has only identified the appellants as the assailants and admitted in cross-examination that he was not examined by the police. Similarly PW-9 admitted that he was not examined by the, police. PW-10 has contradicted himself. PW-11 also admitted that he could not say who assaulted whom. The assailants of PW-12 and Bhutnath Mahto have been acquitted by the trial Court. PW-13 has been tendered by the prosecution. PW-14 is also the hearsay witness. PW-15 is the doctor and PW-16 has formally proved certain writings on the grant of sanction for prosecution under Explosive Substance Act.

6. In the facts of this case where the proceeding of the trial resulted in conviction of two appellants out of nine persons, that too for injuries found simple in nature by the doctor, the prosecution version suffers from credibility as many of the eyewitnesses examined by the prosecution have submitted that they were not examined by the police. The place of occurrence itself remains doubtful as the prosecution has not brought on record any document supporting their claim that they possessed and planted the paddy on plot No. 1375 of Khata No. 118 being harvested by them. The defence on the contrary, has brought on record the documents for land belonging to them of course of plot No. 1265 of Khata No. 118. The non-examination of the Investigating Officer further makes the whole prosecution story doubtful. The appellants have already faced the trial for last twenty-four years including the period of appeal. In such view of the facts, I find and held that the prosecution has not been able to bring home the charges against the appellants beyond all reasonable doubts. Accordingly, I find that the present appeal has got merit and deserves to be allowed.

7. In the result, this appeal has got merit and is allowed. The conviction of the appellants passed by the trial Court is hereby set-aside. The appellants are discharged from then liabilities of ball bonds.