
(2009) 12 JH CK 0091
In the Jharkhand High Court

Kaju Mahto and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2009) 12 JH CK 0091

Hon'ble Judges : Prashant Kumar, J; Narendra Nath Tiwari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

This batch of appeals arises out of the judgment of learned 6th Additional Sessions, Dhanbad passed in Sessions Trial Case No. 57 of 1991, whereby 14 accused persons are held guilty under Sections 302 and 149 of the Indian penal Code for committing murder of Ganesh Mahato. They have been also held guilty for the offence u/s 148 of the Indian Penal Code for rioting, being armed with deadly weapons 12 accused persons, namely, Kanchan Mahato Chamu Mahato Gulshan Mahato Haribol Mahato, Lalu Mahato, Jagdish Mahato Jainath Mahato Ratilal Mahato, Shiva Mahato, Mahavir Mahato, Sonarqm Mahato and Jang Bahadur Mahato are further held guilty for the offence under Sections 307 read with Section 149 of the Indian Penal Code for assaulting the informant-Fulchand Mahato and his wife-Sulochana Devi, The said accused persons have been sentenced to undergo life imprisonment for committing murder of Ganesh Mahato with a fine of Rs. 2,000/- each. They are also sentenced to undergo rigorous imprisonment for one year for the offence u/s 148 of the Indian Penal Code. Further, 12 accused persons have been sentenced to undergo rigorous imprisonment of 10 years with fine of Rs. 1,000/- each under Sections 307/ 149 of the Indian Penal Code

2. The said judgment has been assailed by the convicts-appellants in different appeals, as appeared in the cause title, The Appellant No. 3-Haribol Mahato of Cr,

Appeal (DB) No. 224 of 2001 died during the pendency of the appeal, There is no application for any representation, The appeal against him, as such, is abated.

3. The case is based on the fardbeyan of Fulchand Mahato dated 20th June, 1985 recorded at Tetulmari Hospital at 7.25 a.m.

4. The prosecution case, in brief, is that on 20th June, 1985 at about 6.00 a.m. Kanchan Mahato was sowing seed in the field, being Plot No. 1712 at village Nagrikala, P.S. Tetulmari, District Dhanbad. Sulochana Devi, wife of the informant, went there and protested, whereupon Kanchan Mahato started abusing and assaulting her. She raised alarm. Ganesh Mahato rushed to rescue her. Accused Jai Nath Mahato, Sanichar Mahato, Chamu Mahato, Gulshan Mahato and Mahavir Mahato armed with Farsa; Haribol Mahato and Raghubir Mahato armed with Tangi, Shiva Mahato, Sona Ram Mahato, Jang Bahadur Mahato and Lalu Mahato armed with Lathi; and Rati Lai Mahato armed with Garasa emerged from the adjacent bush and started assaulting them. Kanchan exhorted to kill them, saying that they were being harassed by them for a long time and this is the opportune moment to finish them. Thereafter, Jai Nath, Kanchan, Gulshan and Rati Lai assaulted Ganesh. Kanchan assaulted him on his hand, leg and thigh, as a result, Ganesh fell down. All the accused persons, thereafter, pounced over him and indiscriminately assaulted him. When the informant-Fulchand tried to rescue his brother, Kanchan, Jai Nath, Rati Lai and Sanichar assaulted him with Farsa. Jang Bahadur and Sona Ram assaulted the informant's wife with Lathi. The informant on receiving injury fell down and became unconscious.

5. On the basis of the said fardbeyan, a formal first information report was drawn. The police registered a case under Sections 147, 148, 149, 324, 326, 323 and 307 of the Indian Penal Code. Subsequently, Ganesh died due to the said injuries and Section 302 of the Indian Penal Code was also added.

6. Police took up the investigation of the case, prepared inquest report, sent the dead body of Ganesh for postmortem, visited the place of occurrence and after completing the investigation submitted charge sheet. On that basis, cognizance was taken and the case was committed to the Court of Sessions.

7. Charges under Sections 302/ 149, 307/ 149 and 147 of the Indian Penal Code were framed against accused Shiva Mahato, Sona Ram Mahato, Jagdish Mahato and Lalu Mahato. As against Jai nath Mahato, Jang Bahadur Mahato, Chamu Mahato, Gulshan Mahato, Mahavir Mahato, Haribol Mahato, Raghubir Mahato, Rati Lai Mahato, Kanchan Mahato and Kaju Mahato charges were framed under Sections 302/ 149, 307/ 149 and 148 of the Indian Penal Code. The accused/appellants denied the charges and claimed to be tried. One of the accused, namely, Sanichar Mahato died before framing of the charge.

8. In order to establish the charges against the appellants, the prosecution examined, altogether, nine witnesses. They are P.W.1-Sulochana Devi (informant's wife), P.W.2-Fulchand Mahato (informant), P.W.3-Ruplal Mahato, a domestic help of the informant, P.W.4-Champa Devi (wife of the deceased),

P.W.5-Khokha Mahato, a seizure list witness, P.W.6-Dr. Arbind Kumar Sinha, who examined injuries of the informant and his wife, P.W.7-Uchit Ram Mahato and Sona Ram, father of the deceased, P.W.8-Dr. D. K. Dhiraj, who held postmortem of the deceased and P.W.9-Anil Kumar, Investigating Officer.

9. The defence has also examined as many as eight witnesses.

10. Learned Trial Court on conclusion of the trial passed the impugned judgment mainly relying on the evidences of the informant-P.W.2 and P.Ws.1, 3, 4 and 7 coupled with the medical evidences of P.Ws.6 and 8. He also found that the evidence of P.W.9-Investigating Officer was also corroborative and supporting. On that basis, he held the accused/appellants guilty of the said charges and convicted and sentenced them as aforesaid.

11. The appellants, though filed appeals separately, have taken almost similar point to challenge the impugned judgment of their conviction.

12. According to the appellants, the very basis of the prosecution is doubtful. There are at least four different versions on lodging of F.I.R. According to the evidence, the first and the earliest statement given to the police has not been brought on record. Yet another statement made by Sona Ram @ Uchit, said to be first statement, has been proved as Ext.9. The same has not been made the basis of the prosecution. The prosecution case, thus, is hit by the provisions of Sections 161 and 162 Cr.P.C. and the entire prosecution is vitiated. It has been contended that the said infirmity renders the entire criminal proceeding wholly unsustainable and illegal. The prosecution has further failed to prove the manner of occurrence, place of occurrence and the genesis of occurrence. The testimonies of the prosecution witnesses on those points are full of fatal contradictions. The prosecution case is based on the fardbeyan of Fulchand Mahato, which is fourth first statement in view of the evidences on record. The evidences of the so-called eye witnesses/injured witnesses are self contradictory. The same have also not been supported by other evidences, including the medical evidences and the evidence of the Investigating Officer. There is, thus, no legal basis for the conclusion drawn by the learned Trial Court, holding the appellants guilty for the alleged offences. Learned Trial Court, while ignoring the said factual contradictions and the serious legal infirmities, has erroneously convicted the appellants. Lacunae in the prosecution case have been ignored. The finding of the learned court below is based on lopsided consideration. Learned Trial Court has also ignored the defence evidence, by which enmity and land dispute as also the plea of alibi of some of the accused persons in the village on the date of occurrence have been proved.

13. It has been further submitted on behalf of the appellants that Ext.3 is the first information report, based on the fardbeyan of Fulchand Mahto. The informant has been examined as P.W.2. The said witness in his statement in paragraphs 17 and 18 has falsified the fardbeyan. He has stated that after receiving assault, he became unconscious and gained his sense after 24 hours,

Ext.3 which was allegedly said to be his fardbeyan after the occurrence is falsified. Another statement, which has been brought on record, which is admitted document and marked as Ext.9 is the statement of Sona Ram @ Uchit. In his evidence, he has stated that he had given the first information to the police about the incident which was recorded at the police station. Learned Counsel submitted that the said statement, which should have been the basis of the prosecution, has not been brought on record. Further, the Investigating Officer, P.W.9, in his statement in Para-43 has also stated that the first information was given by Sona Ram. He further stated that he had taken the statement of Fulchand Mahato at the place of occurrence. Since Fulchand Mahato was injured, he was sent to the hospital thereafter. Learned Counsel submitted that those statements have been suppressed by the prosecution. The informant-P.W.2 has stated in Para-18 that the first information was given by his mother. That statement has also not been brought on record. The mother of P.W.2 has not been examined. Learned Counsel submitted that in this admitted position that there were four different versions with respect to first information and suppression of three versions cast serious doubt on the credibility of the first information of Fulchand and this ground alone is sufficient to discard the prosecution case. Learned Counsel further submitted that the ocular evidence on the manner of the occurrence is also highly inconsistent. In the first Information report, Kanchan was said to be armed with Garasa whereas the so-called eyewitness and injured witness and other witnesses have given different description, regarding the arms held by Kanchan. P.W.1 said sword and Farsa, P.W.2- Farsa, lathi and Bhala, P.W.3 Farsa, P.W.4 sword and Farsa. Regarding Jai Nath Mahto it was alleged In the first information report that he was armed with Farsa whereas in evidence P.W.1 has said sword. According to P.W.2-Farsa and Lathi, P.W.3-Farsa and P.W.4-sword. Chamu Mahto was allegedly holding Farsa. But according to P.W.1, he was armed with sword and Farsa, P.W.2- Lathi, P.W.3-Farsa, P.W.4-sword and Farsa. Regarding Gulshan Mahato it was alleged that he was holding Farsa, but P.W.1 has said that he was armed with sword and Farsa, P.W.2 said with Lathi, P.W.3-Farsa and P.W.4-sword and Farsa. The appellant-Raghubir Mahato was said to be armed with Tangi, but P.W.1 has said that he was armed with Bhala, P.W.3-Tangi, P.W.4-Farsa and Lathi. The appellant-Haribol Mahto was allegedly armed with Tangi, but P.W.1 has stated that he was armed with Bhala and Farsa, P.W.3-Tangi and P.W.4-Lathi.

14. Contradictory statements have also been made with regard to the arms held by Shiba Mahato, Sona Ram Mahato; Jagdish Mahato, Lalu Mahato, Ratilal Mahato, Jang Bahadur Mahato and Kaju Mahato. It is further stated that Kaju Mahato was not even named in the first information report and his name was subsequently introduced.

15. Further, though several witnesses have stated that the accused persons were holding sword, P.W.2 in Para-2 has stated that nobody was armed with sword. P.W.3 in Para-25 has specifically stated that nobody was armed with Tangi, but in the first information report, Raghubir is said to have armed with Tangi. P.W.3 also

earlier in Para-4 has stated that Raghubir and Haribol were holding Tangi. P.W.4 has further falsified the statements of other witnesses and stated in Para-24 that seven persons were holding sword and no one was armed with Garasa.

16. Learned Counsel submitted that there are vital contradictions on the point of genesis of the occurrence. In the first information report, the genesis is said to be sowing of the land by the appellants. It has been stated that when Sulochana Devi, wife of the informant, went to the field and saw the appellants sowing the land; she objected, whereupon the accused persons started assaulting her and Ganesh Mahato. In the information given by Song Ram, Ext.9, it has been clearly mentioned that Sona Ram's sons and daughter-in-law were ploughing the land to which the appellants objected, and that led to the said occurrence. P.W.1 has given yet another version. She has stated that she along with P.W.4 had gone to spread manure in the field which was objected to by the appellants and that was the genesis of the occurrence. P.Ws.1 and 2 have stated that Champa Devi, wife of the deceased, was also assaulted in the incident. Champa Devi was examined as P.W.4, but she has not supported the said version. There was no such allegation in the fardbeyan as well. There are different versions about the place of occurrence. P.W.2 in Para-25 has stated that there is a tank nearby the place of occurrence, but P.Ws.1, 3 and 9 (Investigating Officer) have stated that there is no tank near the place of occurrence.

17. Learned Counsel further submitted that if the facts and evidence on record are read in totality, it leads to the conclusion that the entire prosecution case is based on concoction and falsehood and the appellants have been falsely implicated due to enmity and land dispute. The conviction of the appellants is not based on cogent evidence and the judgment of the learned Trial Court is wholly vitiated.

18. Learned A.P.P. as also Mr. Deepak Kumar, learned Counsel; appearing on behalf of the informant supported the impugned judgment and submitted that the prosecution case is based on the fardbeyan of Fulchand Mahato, Ext.3 and the other statement can be said to be the subsequent statement u/s 161 Cr.P.C. and the said Ext.3 is not hit by Section 162 Cr.P.C. They submitted that the witnesses were examined in the Court after a gap of 7-8 years from the date of occurrence, some inconsistency in the statements of the witnesses is not unnatural. The witnesses are ignorant and are of rural background, minor contradiction in their testimonies is not unnatural and on that ground their testimony cannot be discarded. The evidence on the murder of Ganesh Mahato by these accused persons with lethal weapons is consistent. P.Ws.1, 2, 3 and 4 are the eyewitnesses. P.Ws.1 and 2 are also injured witnesses. Their testimonies cannot be discarded only on the ground of there being interested witnesses and minor contradictions in their depositions, It has been further submitted that only because there are different versions regarding existence of tank near the place of occurrence, it cannot be said that the prosecution has failed to prove the place of occurrence. The evidence of the Investigating Officer read with the statements of

eye witnesses prove the place of occurrence. The appellants were aggressors and they deliberately conspired to prevent the deceased the owner of the land from cultivating the land and on his objection they committed murder of the deceased. The accused/appellants formed unlawful assembly with common object. They were variously armed with lethal weapons. There are sufficient evidences on record by which the prosecution has been able to establish the charges against the appellants. Learned A.P.P. referred to a decision of the Hon'ble Apex Court in the case of *Vikram and Ors. v. State of Maharashtra* (2007) 12 SCC 332 in support of his contention that existence of another cryptic report or information cannot be treated as the first information report. The first information report is the report, which is a detailed one. The said decision also goes to support that when the eyewitnesses are examined in the Court after a long time of occurrence, some contradictions and omissions in their depositions do not discredit their testimony and lead to a conclusion of false implication of the accused persons.

19. Having heard learned Counsel for the appellants, learned A.P.P. and Mr. Deepak Kumar, learned counsel, appearing on behalf of the informant, we meticulously scrutinized the facts, materials and evidences on record. From the prosecution evidence four different versions regarding the first information have emerged on record. Two recorded versions have been proved as Exts.3 and 9. The prosecution, is based on the fardbeyan of Fulchand Mahato, Ext.3. The prosecution has failed to explain the reason for choosing Ext.3 as F.I.R. And discarding the statement of Sona Ram @ Uchit, Ext.9. On going through Ext.9, we find that Sona Rdm had claimed that he had given first information to the police. His statement was also recorded in the police station, but that statement Ext.9 has not been treated as first information by the prosecution. We further find that the Investigating Officer, P.W.9, has stated at Para-43 that he had first taken statement of Fulchand Mahato at the place of occurrence, but that statement has also not been brought on record. Fulchand Mahato has himself stated in Paras-17 and 18 that he had become unconscious after the occurrence and came to his senses after 24 hours and before that his mother had given information to the police regarding the occurrence. The said statement is also not on record. It is also doubtful that Ext.3 was recorded on the basis of statement of Fulchand Mahato at 7.25 a.m. on the date of the occurrence, whereas in his deposition, he has stated that he was unconscious for about 24 hours after the incident. The said contradictory statements, thus, give rise to serious doubt on the veracity of the prosecution case. Further, we find that there are different versions regarding place of occurrence. There are different statements of P.Ws.1, 2, 3 and 9 regarding topography of the place of occurrence. Also on the manner of occurrence, there is no consistency in the-statements of the prosecution witnesses. In that view, we find substance in the submissions of learned Counsel for the appellants that there are vital contradictions in the statements of the witnesses regarding arms held by the accused persons and the manner of occurrence. We further find serious contradictions on the point of genesis of the

occurrence.

20. Since other statements said to be the first information(s) have not been brought on record, it cannot be said that the said informations/statements were cryptic. The statement contained in Ext.9, which is on record, at least, is descriptive version. The contradictions in the oral testimony of the prosecution witnesses are vital and adequate to discard their evidences. Conviction based on such incredible evidence cannot sustain. The decision of the Hon''ble Apex Court in the case of Vikram and Ors. (Supra) has got no application to the facts of the instant case.

21. The aforesaid vital contradictions, inconsistencies and infirmities in the prosecution case and evidences renders the impugned judgment wholly perverse. We find no substance in the submissions of learned A.P.P./learned Counsel appearing on behalf of the informant that the contradictions are minor and ignorable. The prosecution has also failed to explain withholding of the other three "first information" given by different persons to the police, In view of the clear admission of the informant coupled with the existence of Ext,9, the fardbeyan of P.W.2 (Ext.3) is also hit by the provisions of Section 162 Cr.P.C. The impugned judgment has, thus, no legal basis for survival.

22. We therefore, allow these appeals, set aside the impugned judgment of conviction and order of sentence. The appellants are acquitted of the charges.

23. Since the appellants are said to be on bail, they are discharged from the liability of their bail bonds.