
(2020) 01 JH CK 0069

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 49 Of 2013

Madan Mahto And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 300, 302, 304
Code Of Criminal Procedure, 1973 — Section 374(2), 389(1)

Citation : (2020) 01 JH CK 0069

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Darshana Poddar Mishra, Arun Kumar Pandey

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J

1. Three brothers, namely, Madan Mahto, Sital Mahto and Kapil Mahto have been made accused in Tatisilwai P.S. Case No. 36/09, which has been

registered on the basis of the fardbeyan of Bisun Mahto, brother of Krishna Mahto. The above-named accused persons have faced the trial on the

charge under section 302/34 of the Indian Penal Code for committing murder of Krishna Mahto. They have been convicted and sentenced to RI for

life and fine of Rs.5000/- each under section 302/34 of the Indian Penal Code.

2. During the trial, the prosecution has examined eight witnesses; the informant is PW-6.

3. Sanju Kumari PW-2 is the sister of the deceased. She has been declared hostile at the instance of the prosecution.

4. Geeta Devi PW-1, Sarswati Kumari PW-3, Ranthu Mahto, PW-4, Phulmani Devi PW-5 and Bisun Mahto PW-6 are the eye-witnesses.

5. The learned Sessions Judge has held that ocular evidence is fully corroborated by the medical evidence and lapses during the investigation such as

failure of the Investigating Officer to produce report on the blood-stained weapon and soil would not prove fatal for the prosecution.

6. Mrs. Darshana Poddar Mishra, the learned Amicus submits that;

(i) the so-called eye-witnesses have not seen the actual occurrence, (ii) conduct of the prosecution witnesses in not trying to save Krishna Mahto

makes their testimony doubtful, and (iii) non-examination of any independent witness though the occurrence is in the evening and the lapses during the

investigation has created serious doubt on complicity of the appellants in the occurrence. Alternatively, the learned Amicus has contended that from

the prosecution's evidence it would appear that the appellants without pre-meditation, in a sudden quarrel and in the heat of passion have assaulted

Krishna Mahto which unfortunately has proved fatal and, therefore, the appellants at best can be convicted and sentenced under section 304 part-II of

the Indian Penal Code.

7. To fortify her submission, the learned Amicus has relied on the decision in *Nandlal Vs. State of Maharashtra* reported in (2019) 5 SCC 224.

8. In his fardbeyan, the informant has stated that at about 6:00 p.m. in the evening of 20.06.2009 after easing himself in the field when he came near

his house, he saw Kapil Mahto, Sital Mahto and Madan Mahto assaulting his brother. His brother was lying on the ground and crying for help. After

assaulting his brother, the accused persons thinking that he has died left him and ran away towards their house. The informant has further stated that

he informed the police which brought his injured brother for treatment at RIMS. However, his brother was declared dead by the doctors. According to

the informant, there was a dispute in respect of a pathway. He has been examined in the court as PW-6. In the court also he has stated about assault

on Krishna Mahto by the appellants with farsa, tangi and dauli.

9. The wife of the deceased is PW-1. She has stated that in the evening of 20.06.2009 she was at home and her husband, Bishun (informant) and

others were also there. At that time, a quarrel started between her husband and Kapil Mahto for the pathway. At that time Madan Mahto and Sital

Mahto were also present there and they supported Kapil Mahto. She has further stated that the aforesaid accused persons went to their house and

brought tangi and farsa and started assaulting her husband. When her husband became unconscious they fled away. PW-3 is daughter of the

deceased. PW-4 is brother of the deceased and PW-5 is wife of PW-4. These witnesses have also claimed that they have seen the appellants

assaulting Krishna Mahto. During their cross-examination, PW-1, PW-3, PW-4, PW-5 and PW-6 have remained unshaken and nothing significant

could be elicited by the defence from them so as to create a doubt on their presence at the place of occurrence.

They are inmates of the house and, therefore, their presence at the place of occurrence is quite natural. A little variation in the testimony of the

prosecution witnesses and few stray statements in their cross-examination would not create doubt on their evidence.

10. By now it is well accepted that almost in every case there would be some inconsistencies, exaggerations, improvements, embellishments etc. in

testimony of the prosecution witnesses but on minor inconsistency or improvement or embellishment or exaggeration eye-witness account of the

prosecution witnesses cannot be rejected altogether. In *Shankar Vs. State of Karnataka* reported in (2011) 6 SCC 279, the Hon'ble Supreme

Court has held as under:

“22. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation,

namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the

omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material

improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies,

embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on

which the evidence can be rejected in its entirety.”

11. From the evidence of PW-1, PW-3, PW-4, PW-5 and PW-6, the prosecution has proved presence of the appellants at the place of occurrence and

at the time of occurrence. These witnesses have spoken about assault by the appellants on Krishna Mahto and, therefore, their participation in the

occurrence is established. In view of cogent and consistent evidence of these

witnesses failure of the prosecution to examine any independent witness has become irrelevant.

12. Now, it has to be seen whether benefit under Exception-4 to section 300 of the Indian Penal Code can be given to the appellants.

13. The essential ingredients to bring a case under Exception-4 to section 300 of the Indian Penal Code are; (i) there should not be premeditation, (ii)

the incident has happened upon a sudden fight and in the heat of passion the accused has assaulted the victim, and (iii) the accused has not taken

undue advantage or acted in a cruel or unusual manner.

14. According to the prosecution, there was a dispute between the appellants and Krishna Mahto for a pathway; houses were constructed several

years before the incident has happened. The prosecution witnesses, particularly, PW-1, PW-4 and PW-6 have stated about dispute between the

parties for the pathway.

15. Referring to the decisions in Nandlalâ??s case the learned Amicus has submitted that there was no pre-meditation as would appear from the fact

that initially the appellants were unarmed. They brought arms from their house and then assaulted Krishna Mahto. Though we have serious

reservations on this proposition but assuming for the sake of argument that there was no pre-mediation before the appellants have assaulted Krishna

Mahto, we are of the opinion that the present is not a case which would fall under Exception 4 to section 300 of the Indian Penal Code. The reason

why we are inclined to observe this is the medical evidence. Dr. Rajesh Kumar Prasad PW-7 who has conducted the post-mortem examination on

21.06.2009 at 12:00 hrs. has found the following injuries on Krishna Mahto:

â??Abrasion:

(i) 4x1 c.m. -right shoulder top;

(ii) 3x2 c.m. 1x 1 c.m. and 1x1 c.m. â??front of right shoulder upper part;

(iii) 15x 1½ c.m. left arm back;

(iv) 3x2 c.m.-left shoulder-upper part lateral side;

(v) 12x2 c.m. lateral side lower part left arm.

Incised Wound:

(i) 15x2 c.m. x bone deep cutting left eye ball underlying left auxiliary and nasal

bone situated obliquely from the glabella to the left tragus;

(ii) 10 c.m. x 1 c.m. x bone deep from the lower margin of right eye, bridge of nose and left cheek upper part situated 02 c.m. below the

preceding injury;

(iii) 4 c.m. x 1 c.m. x bone deep on left cheek lower part 02 c.m. left to angle of mouth cutting underlying bone;

(iv) 5 c.m. x 1 c.m. x bone deep on right supra orbital area situated obliquely cutting soft tissues and underlying right frontal bone;

(v) 3 c.m. x 1 c.m. x bone deep cutting underlying left patella upper part;

(vi) 5 c.m. x 1 c.m. x bone deep front and medial side of the left knee cutting medial side of the femur bone lower part;

(vii) 1 c.m. x $\hat{A}^{1/2}$ c.m. x bone deep below left knee cutting left tibia bone upper part.

Lacerated Wound:

(i) 3 c.m. x 2 c.m. x bone deep lacerating soft tissue and left frontal bone;

(ii) $1\hat{A}^{1/2}$ c.m. x $\hat{A}^{1/2}$ c.m. soft tissue left frontal area of skull 02 c.m. medial to preceding injury;

(iii) 5 c.m. x $\hat{A}^{1/2}$ c.m. x soft tissue over right temporal area.â??

16. The number of injuries to Krishna Mahto is a pointer that assault by the appellants on him was disproportionate to the incident, that is, the quarrel

which has taken place between them. Though the learned Amicus has tried to contend that many of the injuries have been caused on the lower part of

the body of Krishna Mahto, we find that as many as four injuries, all by sharp-cutting weapon and bone deep, have been caused to Krishna Mahto

around his occipital region. The number of injuries and particularly injury Nos. (i) to (iv) would reflect the cruel manner in which the appellants have

assaulted Krishna Mahto. The deceased was unarmed and no material has been brought on record to suggest that he has attacked the appellants and,

therefore, such injuries caused to Krishna Mahto by the appellants were certainly unusual and disproportionate.

17. In view of the aforesaid facts, we are of the opinion that benefit under Exception 4 to section 300 of the Indian Penal Code cannot be extended to

the appellants.

18. The learned Amicus has lastly contended that the learned Sessions Judge has

not recorded a finding on common intention of the appellants in furtherance of which murder of Krishna Mahto has been caused.

19. This criminal appeal being filed under section 374(2) read with section 389(1) of the Code of Criminal Procedure is an appeal both on the facts as

well as on law. We have carefully examined the records of Sessions Trial No. 703 of 2009 and observe that if nothing else but only for the reason that

several sharp-cutting grievous injuries have been caused to Krishna Mahto by the appellants, it can be safely inferred that the appellants shared the

common intention to cause his death and death of Krishna Mahto has been caused in furtherance of common intention of all.

20. The appellants have rightly been convicted under section 302/34 of the Indian Penal Code.

21. In the above facts, finding no ground to interfere in this matter, Criminal Appeal (D.B.) No. 49 of 2013 is dismissed.

22. We appreciate the able assistance rendered by Mrs. Darshana Poddar Mishra, the learned Amicus, who has prepared short synopsis, notes on the

prosecution's evidence and has also tendered copy of the judgment. She shall be paid fee and reimbursed for the expenses incurred by her.

23. Let lower court records be transmitted to the court concerned, forthwith.

24. Let a copy of the judgment be communicated to the trial court through FAX.