
(2007) 02 JH CK 0017

In the Jharkhand High Court

Case No : Criminal Appeal No. 154 of 1999 (R)

Mahabir Prasad Sahu

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 304, 323, 324, 325

Citation : (2007) 2 BLJR 1289 : (2007) 2 JCR 279

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : K.K. Singh, for the Appellant; Assistant Public Prosecutor, for the Respondent

Judgement

D.K. Sinha, J.—The present appeal is directed against the judgment and order dated 2.6.1999 passed by Shri Anant Vijay Singh, 3rd Additional Judicial Commissioner, Ranchi in S.T. No. 154 of 1991 whereby and whereunder the sole appellant, Mahabir Prasad Sahu was convicted u/s 304 Part-1 of the Indian Penal Code and was sentenced to undergo rigorous Imprisonment for seven years. No separate sentence was awarded to the appellant for his conviction u/s 323 IPC. Other three co-accused were acquitted by the same Judgment.

2. The prosecution story in short is that the informant, Chedi Prasad Sahu (P.W.1) presented a written report (Ext.1) before the Mandar Police on 1.1.1990 stating inter alia that on 30.12.1989, at about 8 p.m. four accused persons including the appellant, Mahabir Prasad Sahu appeared in the lane, opposite the house of the informant. The appellant was having spade (Kudal in hands) whereas his other brothers namely, Bhagwat Sahu, Sahabir Sahu and Sulendra Sahu were having sticks. They started digging the lane and it is alleged that the father of the informant, Guru Prasad (since deceased) and the brother of the informant, Jai Prakash Sahu prevented them from doing so which resulted into altercation and when the accused persons including the appellant started assaulting the brother of the informant Jai Prakash Sahu with sticks, it was

intervened by the father of the informant, Guru Prasad Sahu whereupon it is specifically alleged that the appellant assaulted Guru Prasad Sahu (father of the informant) with the sharp portion of spade (Kudal) on his head as a result of which Guru Prasad Sahu fell down sustaining bleeding injury. On alarm the informant with the neighbouring people appeared at the scene but the other two brothers of the appellant, Sahabir Sahu and Bhagwat Sahu assaulted the informant with fists. The victim Guru Prasad Sahu was immediately removed to Ranchi Medical College Hospital, Ranchi for the management of his injury but in course of treatment he succumbed his injuries on 9.1.1990. Initially Mandar Police Case No. 1 of 1990 was registered on the written report presented by the informant on 1.1.1990 for the offence under Sections 341/323/324/34 of the Indian Penal Code, but on the death of Guru Prasad Sahu and after investigation the police submitted chargesheet u/s 304 of the Indian Penal Code as is evident from the impugned Judgment.

3. The prosecution in support of the case had produced and examined as many as nine witnesses. Besides, various documents were proved on behalf of the prosecution viz Post mortem report (Ext.3), inquest report of Guru Prasad Sahu (Ext.4), Formal F.I.R (Ext.5), Paragraphs No. 1 to 54 of the Case diary (Ext.6), Injury report of Guru Prasad Sahu (Ext.7), Signature of Dr. Mahanand Singh on the injury report of Guru Prasad Sahu (Ext.8) and Letter dated 25.11.1994 written by the Head of the Department Neuro Surgery, RMCH, Ranchi to the Registrar Surgery Department, RMCH (Ext.9 with objection).

4. On the other hand, the defence produced and adduced three witnesses including D.W.3.Awadh Prasad Gupta who proved the injury report of Sahabir Prasad Sahu (Ext A/1) as well as Tara Devi (Ext.A/2). Ext. B was the signature of Mahabir Prasad Sahu (appellant).

5. It is gathered that the specific defence of the appellant and co-accused in the trial court below was their false implication by the police as well as suppression of the genesis of the occurrence.

6. The learned Counsel initiating the argument on behalf of the appellant submitted that on the same and similar allegation other three accused persons were acquitted but the appellant was convicted u/s 304, part-I and 323 of the Indian Penal Code without distinguishing the complicity and material evidence against the appellant. He emphasized that the occurrence did not take place in the manner presented by the prosecution. As a matter of fact, the informant's party were aggressors and when the appellant and his brothers appeared in the lane with spade (Kudal) to drain out the water which was logged in their courtyard by broadening the drain, it was obstructed by the informant, his brothers and father who prevented the appellant and his brothers by applying force from digging the lane and in the same sequence they attacked on the appellant, his brothers and other female members of the house of the appellant causing bleeding injuries for which a counter case was instituted against the informant, Chedi Prasad Sahu and his two brothers giving rise to Mandar P.S.

Case No. 84 of 1989 on 30.12.1989 for the offence under Sections 448/109/323/324/34 of the Indian Penal Code, first point in time, whereas the instant case was instituted on 1.1.1990 by the informant after due deliberation and consultation. The learned Counsel for the appellant further submitted that Mandar Police after investigation of the counter case which was brought about by the appellant and others, submitted chargesheet under Sections 323/324/325/34 of the Indian Penal Code. It was specifically alleged that in the counter case the appellant and his brothers were assaulted by the informant's party with the specific attribution that Guru Prasad Sahu (since deceased), Chedhi Prasad Sahu (informant) were armed with sticks whereas Ram Prakash Sahu and Jai Prakash Sahu were armed with spade (Kudal). It was Guru Prasad Sahu (since deceased) who commanded his sons to assault the appellant and his brothers and pursuant to that they started assaulting and on alarm when the wife of the appellant Tara Devi came out, the witness Jai Prakash assaulted her with edged portion of spade (Kudal), as a result of which, she sustained bleeding injury. When the other brothers of the appellant went to rescue her they were assaulted by Guru Prasad Sahu (since deceased) and Chedhi Prasad Sahu (informant) with the sticks and on arrival of the witnesses, the informant's party escaped. The appellant, Mahabir Prasad Sahu brought his wife anyhow to the police station and presented a written report and police case was registered. The learned Counsel further submitted that after full trial the Judicial Magistrate convicted all the three accused persons including the informant, Cheddi Prasad Sahu of the present case in G.R. No. 4205 of 1989 corresponding to T.R. No. 106 of 1993 on 22.6.1993 under Sections 323/34 of the Indian Penal Code and they were released under the provisions of probation of Offenders Act 1958 on executing probation bond to maintain peace and be of good behaviour for one year.

7. The specific allegation against the appellant, Mahabir Prasad Sahu was that when he and his brothers were prevented by the father of the informant (since deceased) and his brother, Jai Prakash Sahu from flushing out the water by digging the lane, all the accused including the appellant started assaulting the witnesses and when the father of the informant Guru Prasad Sahu came forward to rescue his son Jai Prakash Sahu, the appellant inflicted blow with the edged portion of the spade on the head of the Guru Prasad Sahu, as a result of which he fell down sustaining bleedings injuries.

8. The informant, Chedi Prasad Sahu, was examined on behalf of the prosecution as P.W5, who supported the prosecution case with specific attribution of the appellant, Mahabir Prasad Sahu who assaulted his father Guru Prasad Sahu with the edged portion of the spade. He deposed that on 30.12.1989 at about 8 p.m. while he was sitting in the room, he came out on hearing Hulla (alarm) and witnessed the appellant having a Kudal in his hand and the appellant's three brothers armed with sticks and Danda at his door digging out drain to flush out water which was opposed by his father, Guru Prasad Sahu and his brother Jai Prakash Sahu. Such protest ignited them and in the same sequence the accused Sahabir and Bhagwat started assaulting Jai Prakash. When his father tried to

pacify the matter, the appellant assaulted him with the edged portion of Kudal on his head causing cut injury and he fell down unconscious. He was removed to Rajendra Medical College Hospital, Ranchi on the same night but he succumbed his injuries on 9.1.1990 in course of his treatment. On the genesis as well as place of occurrence the witness voluntarily stated that the waste water of the house of the appellant Mahabir Prasad Sahu was collected in a ditch, situated opposite his house. The accused were cutting the edge of the ditch to flush out the water towards his front door of the house. The said ditch was there since 1976. He deposed that his father had first sustained head injury by the blow of Kudal and thereafter other accused assaulted him by dealing 3-4 blows with sticks. He later on came to learn that in course of transaction of the occurrence Tara Devi (wife of the appellant) and Mahabir Prasad Sahu (appellant) had sustained injuries. The other prosecution witnesses such as P.W.1 Sarsawati Devi, P.W.2 Jai Prakash Sahu, P.W.3 Eqbal Hussain have consistently supported and corroborated the version of P.W.5 on material particulars with minor and negligible variation.

9. The victim Guru Prasad Sahu, 60 years, was admitted in the unit of Dr. A.K. Srivastava on 30.12.1989 at RMCH Ranchi vide registration No. ERS-4571 and his injury was examined by P.W.9 Dr. Mahanand Singh who found the following:

One incised wound over the forehead in its middle part measuring 3"x1/2"x bone deep. The wound was less than six hours old caused by sharp cutting weapon. Such injury was possible to be caused by the edge of Kudal.

He proved the injury report (Ext.7). The patient was subsequently referred to the department of Neurology because of bad condition of the patient. He had sent requisition for the bed head ticket to the department of Neuro Surgery. He identified the carbon copy of the requisition which was marked as "X". He also proved the reply of the letter written by Dr. Girish Saron which was marked Ext.9. The Doctor-witness has admitted that such injury was possible if a person falls on a sharp object including on stone.

10. P.W.6, Dr. Renu Bala had held post mortem examination on the body of Guru Prasad Sahu on 9.1.1990 at about 16.30 hours at RMCH, Ranchi and the dead body was identified by Assistant Sub-Inspector of Police. She found the following injuries:

Stiched wound not united (stiches are in position) 6 c.m. long on the right side of fore head and adjoining left side of the forehead and adjoining left side of the fore head situated transversally. Under the stiched wound there was a boney gap 3-1/2 x 3 c.m. on right frontal bone. There was a crack fracture measuring 6 c.m which started from the left margin of boney gap over left side frontal bone. There was another crack fracture from the boney gap which moved down wards. There was contusion of occipital region of brain.

Abrassions:

(I) 1 x 1 c.m. on the back of left palm, scab was present

(II) 2 x 1 c.m. on the front of left knee joint with scab.

In the opinion of the witness doctor abrasion was caused by hard and blunt substance such as stick and blunt portion of Kudal but as regard the opinion of the stitched wound she deposed that the injury was sufficient to cause death in ordinary course of nature. Finally she deposed that stitched wound was not possible to have been caused by Kudal. She proved the post mortem report Ext.2. In the cross examination she deposed that stitched wound found on the dead body was possible by fall because of the fact that counter coup injury on the opposite pole of the brain (Occipital region of the brain) was present. Stitched wound found was possible also due to fall on electric pole made of iron. She admitted having not mentioned in the post mortem report that injury was sufficient in the ordinary course of nature to cause death.

11. Admittedly the appellant as well as the informant and his brothers are the descendants of the common ancestor with the homes opposite to each other across the village lane. P.W.1 Saraswati Devi, P.W. 2 Jai Prakash Sahu, P.W.3 Eqbal Hussain and P.W.5, Chhedi Prasad Sahu are consistent that the occurrence took place on trifling matter. They are consistent that when the appellant with his brothers with Kudal and sticks in their hands were flushing out the accumulated waste water from the ditch situated opposite their house, it was opposed by Guru Prasad Sahu (since deceased) and witness Jai Prakash Sahu for the reason that they were flushing out it in the lane which resulted into altercation and in the same transaction the appellant inflicted blow with Kudal on the head of Guru Prasad Sahu causing bleeding injuries which resulted into his death after nine days in course of treatment but at the same time P.W.5 Chhedi Prasad Sahu (informant) in course of his cross-examination admitted having knowledge that out of the said transaction the appellant, Mahabir Prasad Sahu as well as his wife Tara Devi sustained injuries. Specific case of the defence was that Guru Prasad Sahu (since deceased) sustained head injuries by falling on the electric pole which was lying on the earth near the place of occurrence and P.W. 6 Dr. Renu Bala. Associate Professor in Forensic Medicine Department of RMCH did not find the corresponding injury on the head of Guru Prasad Sahu in the post mortem examination which was alleged to be caused by Kudal. On the other hand, by describing the injuries on the person of the deceased, she was of the opinion that stitched wound found on Guru Prasad Sahu (since deceased) was possible also due to fall on electric pole made of iron. In clear words she deposed that stitched wound was not possible to have been caused by Kudal. The opinion of P.W.6, Dr. Renu Bala is contradictory to the opinion of P.W.9 Dr. Mahanand Singh who had attended Guru Prasad Sahu (since deceased) on 30.12.1989 at first point in time when brought to RMCH, Ranchi admitted him to the indoor patient vide registration No. ERS-4571 and had found incised wound over the forehead in its middle part measuring 3"x 1/2" bone deep caused by sharp cutting weapon. Patient was sent to the Neurology department in view of the

nature of the injuries and he also sent a requisition for bed head ticket but the bed head ticket of Guru Prasad Sahu was not made available so as to produce before the trial court an important corroborative piece of evidence of course an important piece of prosecution evidence. He admitted that copy of the injury report was not sent to the police. It is significant to note that no corresponding injury alleged to be caused by Lathi, as per the statement of the prosecution witness, was found by the Doctor Mahanand Singh whereas such injuries have been recorded in the post mortem report of P.W.6, Dr. Renu Bala which were abrasions on the left palm with scab as well as on the front of left knee joint with scab. Therefore, the post mortem report prepared by P.W.6 Dr. Renu Bala, duly proved by her as to the nature of the injury as well as cause of death of Guru Prasad Sahu appears trust worthy which dismantles the complicity of the appellant in the manner presented by the prosecution which creates reasonable suspicion that the occurrence did not take place in the manner presented by the informant and others witness. The genesis of the occurrence as presented by the prosecution does not inspire confidence. Similarly, injuries on the person of the appellant(Ext.A) and upon his wife Tara Devi in the nature of incised wound on her head and dislocation of her left shoulder joint (Ext. A/2) speak otherwise which could not be explained by the prosecution in the instant case. For the reasons and discussions made above there appears reasonable suspicion that the occurrence did not take place in the manner presented by the prosecution. More so, the informant and his brother witnesses in the counter case brought about by the appellant, have been convicted u/s 323/34 IPC.

12. In the result, after giving him benefit of doubt the appellant is acquitted from his conviction u/s 304 part-II and 323 IPC awarded by 3rd Additional Judicial Commissioner, Ranchi in Sessions Trial No. 154 of 1991. His bail bond stands discharged.