
(2010) 09 JH CK 0142
In the Jharkhand High Court
Case No : Criminal Appeal No. 565 of 2002

Mani Mahto and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2010) 09 JH CK 0142

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—This appeal is directed against the judgment of conviction dated 6th August, 2002 and order of sentence dated 7th August, 2002 passed by Shri Pradeep Kumar, Additional District & Sessions Judge, Fast Track Court-II, Bermo at Tenughat in Sessions Trial No. 66 of 1989, by which judgment he found all the Appellants guilty u/s 148 and 324/149 of the Indian Penal Code and sentenced them to undergo S.I. of 3 years for offence u/s 148 of the Indian Penal Code and also sentenced them to undergo S.I. of 3 years for the offence u/s 324 read with Section 149 of the Indian Penal Code. Both the sentences shall run concurrently.

2. It is submitted by the learned Counsel for the Appellants that it will appear from the evidence of witnesses that none of the Appellants were present at the place of occurrence and their evidences, are not reliable. In that view of the matter, the Appellants are entitled to be acquitted. Moreover, learned Counsel submitted that the Appellants have remained in custody for sometime, hence the sentences may be reduced.

3. On the other hand, learned Counsel for the State has opposed the prayer and submitted that P. Ws. 3 & 4 had seen the occurrence and have stated that the accused-Appellants were assaulting the injured and subsequently died. Learned Counsel has further submitted that in this case the I.O. and Doctor have not been examined and thereby the defense has been prejudiced due to non

examination of the I.O. and doctor.

4. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a Fardbeyan given by the injured himself stating therein that he purchased a tree of Mahua from Lodha Manjhi of Ambadih and cut down the same on 12.3.87. On 15.3.87 at about 7 am in the morning he went to bring that Mahua tree and for this he was cutting and pruning the tree. Then the accused persons came there and assaulted him with the back portion of "tangi", causing injury on his hand, leg and chest and he became seriously injured.

5. On the basis of the said F.I.R. police registered a case under Sections 147, 148, 323, 325 of the Indian Penal Code. Subsequently when the injured died Section 302 of the Indian Penal Code was added and after investigation charge-sheet was submitted in the case.

6. Since, the case was exclusively triabl by a Court of Sessions, the same was committed to the Court of Sessions and finally it was transferred to the Court of Additional Sessions Judge, who tried the case and passed the judgment.

7. In order to prove the charges the prosecution has examined 8 witnesses.

8. P.W. 1. Ratan Lal is a formal witness, who has proved the formal F.I.R. as Ext.-1.

9. P.W.5, Ashish Kumar is also a formal witness, who has proved the signature of the I.O on the fardbeyan as Ext.-2.

10. P.W. 7, Mukhlal Sao is a tender witness.

11. P.W.8, Dr. Upendra Prasad is another formal witness, who has proved carbon copy of the postmortem report and the signature of the doctor, who conducted the post-mortem report as Ext.-3.

12. P. Ws. 2, 3, 4 are the material witnesses.

13. P.W.2, Shanti Devi is the wife, who stated that on hearing that his husband was being assaulted by the accused persons then she along with her dever went to the place of occurrence. Due to fear she could not go near, she saw from a distance that all the accused persons had axe in their hand and all were standing there.

14. P.W.3, Sadhu Sao stated that he had gone to the jungle along with Mukhlal Sao to collect wood; suddenly he heard the sound of Mangar Sao "Bachao-Bachao". Then, he went there and saw that the accused persons were assaulting the deceased with the back of tangi. At the same time the wife of injured came there.

In his cross-examination, he stated that he saw the Appellants from a distance of 54-56 degs.

15. P.W.4, Saryu Sao son of the deceased stated that he was asked by his father to bring a bullock-cart to collect the tree and when he reached there along with bullock-cart he saw that the accused persons assaulting his father with back portion of the tangi.

In his cross-examination, he stated that he saw the occurrence from a distance when the other witnesses were taking his father on cot after the accused persons assaulted his father. This witness has also probably not seen the occurrence from his own eyes and probably he saw his father when he was being taken on a cot by other witnesses. So there is only two witnesses who saw the accused persons assaulting the deceased. One is the wife of the deceased who had seen the occurrence from a distance and other is the son of the deceased, who is also a chance witness.

16. The defense in cross-examination from all witnesses is that the deceased was professionally a thief and he had gone to jungle to take away the tree and probably he was assaulted by the villagers and the Appellants were falsely implicated.

17. In the facts and circumstances of the case, I find that there is very little evidence and it is difficult to come to a finding that the Appellants probably assaulted the injured-deceased and accordingly since no I.O and doctor were examined. The Court has found them only guilty under Sections 324/149 of the Indian Penal Code as also u/s 148 of the Indian Penal Code

18. Since, the evidence of the sole eye witness-P.W.3 is also not corroborated by any other witness and son-P.W.4 has stated in his cross-examination at para 4 that after being assaulted his father became unconscious and he died at about 5 pm. in the evening. In that view of the matter, even the F.I.R. given by the deceased is doubtful. Hence, all the Appellants are given benefit of doubt and acquitted from the charges leveled against them.

19. The appeal is accordingly, allowed.

20. The Appellants are on bail, they are released from the bondage of their bail bonds.