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**(2003) 04 JH CK 0045**  
**In the Jharkhand High Court**  
**Case No : Criminal Appeal No. 247 of 2002**

Radha Mahto and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

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**Date of Decision :** 21-04-2003

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 34

**Citation :** (2003) CriLJ 2858 : (2003) 2 JCR 692

**Hon'ble Judges :** Vinod Kumar Gupta, J;Lakshman Uraon, J

**Bench :** Division Bench

**Advocate :** Randhir Singh, for the Appellant; Bhatya Bishwajit Kumar, APP, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Lakshman Uraon, J.—All the appellants, named above, have preferred this appeal against the judgment and order of conviction and sentence dated 31.5.2002 and 1.6.2002 respectively, passed by Sri Ishwari Prasad, learned 1st Additional Sessions Judge, Hazaribagh, in Sessions Trial No; 296 of 1996, whereby and whereunder, he has convicted all the appellants u/s 302/34 I.P.C. and sentenced to undergo life imprisonment and further he has convicted appellant No. 2 Naresh Mahto u/s 323 I.P.C. and sentenced him to undergo simple imprisonment for one month. The sentences in respect to appellant No. 2 Naresh Mahto were ordered to run concurrently.

2. The prosecution case, in brief, is that the Informant Guno Ram Mahto (not examined) in his Jardbeyan (Ext. 1), recorded on 9.5.1996 at 22.30 hours at Rajrappa Project Out Post by S.I. A.K. Sahay, has alleged that on 9.5.1996 at 2.00 p.m. in presence of Panchayat Up-Mukhiya Jainath Mahto (not examined), Sarpanch Khirodhar Ganjhu (PW 4) and other villagers, the land adjacent to the house of the informant was being measured by the Amin as there was some dispute in between the informant and appellant Radha Mahto. In course of measurement at about 5.00 p.m. appellants Radha Mahto, Asheshwar Mahto,

Naresh Mahto and Tunnu Mahto started abusing the informant and rushed to their home and soon thereafter, Radha Mahto, armed with farsa, Asheshwar Mahto, armed with axe, and Naresh Mahto and Tunnu Mahto, both armed with lathi, came to the place of occurrence. Appellant Radha Mahto gave farsa blow on the head of Ramji Mahto (father of the informant) whereafter Ramji Mahto, on being injured, fell down. Appellant Asheshwar Mahto gave axe blow on the head of Ramji Mahto. When the informant, his elder brother Mani Ram Mahto (PW 3) and younger brother Manki Mahto (PW 5) went to rescue their father, then all the above named four accused assaulted and injured them. The father of the informant died at the spot. Appellant Tunnu Mahto alias Jaleshwar Mahto was separately tried by the Juvenile Justice Court. All the appellants were charged u/s 302/34, 307/34 and 324/34 of the Indian Penal Code. The learned 1st Additional Sessions Judge, Hazaribagh, having considered the evidence of eight witnesses, produced by the prosecution and Ext, A (F.I.R.), based on the fardbeyan of Asheshwar Mahto, convicted all the three appellants u/s 302/34 of the Indian Penal Code, while acquitted them for the charge u/s 307/34 and 324/34 of the Indian Penal Code. He further convicted appellant Naresh Mahto u/s 323 of the Indian Penal Code and sentenced him to undergo simple imprisonment for one month. However, sentences in respect to appellant Naresh Mahto were ordered to run concurrently.

3. Assailing the judgment and order of conviction and sentence, passed against these appellants, the learned counsel has subletted that they have been falsely implicated in this case due to land dispute in between the parties and the prosecution has failed to bring home the charges, levelled against them. The informant has not examined in this case and the I.O. was partially cross-examined and hence the appellants could not take any contradictions, causing prejudice to them. Measurement of land was being made to settle the dispute in between the deceased and the appellant Radha Mahto. In course of measurement, altercation took place and at a spur of moment, Ramji Mahto was assaulted with farsa and axe, resulting his death, while injuring the others. There was no intention on the part of the appellants to cause murder of Ramji Mahto. Hence it attracts Part II of Section 304 of the Indian Penal Code.

4. The learned A.P.P, has submitted that all the witnesses i.e. PW 1, Ram Singh Mahto, PW 2 Lakhan Mahto, PW 3 Mani Mahto, PW 4, Khirodhar Ganjhu and PW 5 Manki Mahto were present at the place of occurrence when the land in front of the house of Ramji Mahto was being measured by Amin Jagdamba Lala. They have supported the prosecution case that in course of measurement altercation took place. All the appellants went to their home and came back at the place of occurrence. Appellant Radha Mahto had farsa in his hand, appellant Asheshwar Mahto had axe and appellants Naresh Mahto and Tunnu Mahto had lathies in their hands. All the witnesses except PW 4 Khirodhar Ganjhu have deposed that Radha Mahto assaulted with farsa, appellant Asheshwar Mahto assaulted with axe whereas appellant Naresh Mahto assaulted with lathi to the deceased. They also assault and injured the informant, his elder brother Mani Ram Mahto (PW 3)

and younger brother Manki Mahto (PW 5). Their evidence were corroborated by the objective finding of PW 6 Arvind Kumar Choudhary (I.O.) and the medical evidence of Dr. N.K. Singh (PW 7).

5. The defence has not examined any witness but has taken the plea that in course of measurement of land on 9.5.1996 at 5.00 p.m. the alleged occurrence took place in between the parties. All of a sudden both the parties assaulted each other at village-Boyang, in front of the house of the deceased Ramji Mahto. Appellant Asheshwar Mahto also sustained injuries, whose fardbeyan (Ext. A) was recorded by the S.I. A.K. Choudhaiy, Incharge Ramgarh Project Out Post on 10.5.1996 at 10.00 hours and Ramgarh (Project) P.S. Case No. 113 of 1996 was registered under Sections 341, 323, 337/34 of the Indian Penal Code whereas the fardbeyan (Ext. 1) of Guno Ram Mahto (not examined) was recorded on 9.5.1996 at 22.30 hours by the same S.I. A.K. Choudhary at the same place i.e. Raj-rappa Project Out Post. In view of the case and counter case regarding the same occurrence, it is an admitted fact that on 5.9.1996 at 5.00 p.m. the alleged occurrence took place at village-Boyang in course of measurement of land in front of the house of Ramji Mahto. The defence has taken the plea that all of a sudden in a spur of moment the alleged occurrence took place due to claiming of land, as there was land dispute which was being measured by Amin Jagdamba Lala. The said Jagdamba Lala has not been examined in this case and so also the informant Guno Ram Mahto has not been examined In this case by the prosecution, although he had attended the court on 5.3,1997 when his brother Mani Ram Mahto was being examined in the court. At the time of the alleged occurrence PW 3 Mani Ram Mahto and PW 5 Manki Mahto both brothers of the informant Guno Ram Mahto, were present and also sustained injuries in course of rescuing their father Ramji Mahto. Hence non-examination of Guno Ram Mahto is not fatal in this case.

6. PW 1 Ram Singh Mahto, PW 2 Lakhan Mahto, PW 3 Mani Ram Mahto and PW 5 Manki Mahto, all of Village-Beyung, are the eye witnesses including PW 4 Khirodhar Ganjhu (Sarpanch of Urba Panchayat). They have deposed that on 5.9.1996 measurement of land started from 2.00 p.m. The land was being claimed by Ramji Mahto and Radha Mahto. At about 5.00 p.m. in course of measurement, altercation took place. These appellants went to their home and came back with Jarsa, axe and lathi. They have deposed that appellant Radha Mahto assaulted with/arsa and Asheshwar Mahto assaulted with axe on the head of Ramji Mahto whereas Naresh Mahto and Tunnu Mahto assaulted with lathi as a result of which Ramji Mahto died at the spot. When Mani Mahto, Guno Ram Mahto, Manki Mahto and Andu Mahto tried to rescue Ramji Mahto, they were also assaulted by these appellants and in course of scuffle the appellants also sustained injuries on their persons. After the alleged assault, the appellants went to their home and bolted the door from inside. The villagers also bolted their doors from outside. When the police came, then the door was opened and the appellants were arrested by PW 6 S.I. Arvind Kumar Choudhary. PW 1 has deposed that Mani Ram Mahto, Guno Ram Mahto and Manki Mahto sustained

injuries on their persons caused by lathi whereas Andu sustained injury on his hand. Deceased was assaulted on his head with axe and farsa. In course of assault, due to hurling of brick bats, as deposed by Khirodhar Ganjhu, out of fear he left the place of occurrence. PW 2 Lakhan Mahto has further deposed that appellants Radha Mahto, Tunnu Mahto, Asheshwar Mahto and Naresh Mahto also sustained injuries in the said scuffle. They were injured by the prosecution party i.e. Mani, Guno and others. PW 3 Mani Mahto has also corroborated the prosecution case by stating that all the appellants first assaulted Ramji Mahto. Radha Mahto assaulted with farsa and Asheshwar Mahto with axe whereas Naresh Mahto and Tunnu Mahto with lathi. His father died at the spot. When he along with Manki Mahto and Guno Ram Mahto went to save his father, they were also assaulted with lathi. He could not see whether the appellants sustained any injury in that occurrence. He also sustained injuries on his head due to assault with axe and farsa. Guno and Manki also sustained injuries, caused by farsa and axe. When police went to the place of occurrence, then the accused were brought out of their home and were arrested. The villagers snatched farsa axe and lathi from the hands of the assailants and handed over the same to the police. PW 5 Manki Mahto, brother of the informant, has also corroborated the prosecution case without any variation. PW 6 Arvind Kumar Choudhary could not be cross-examined as on 7th June, 1999, after his examination-in-chief, there was no sufficient time to cross-examine him. The I.O. did not appear thereafter for his cross-examination. Therefore the evidence of the I.O. (PW 6) could not be tested at the altar of cross-examination and as such, his evidence is fit to be brushed aside.

7. The ocular evidence regarding manner of the alleged occurrence and assault on deceased Ramji Mahto further finds corroborated by PW 8 Dr. Tulsi Mahto, who conducted the post-mortem examination on his dead body and found the following injuries on the persons of deceased Ramji Mahto :

(A) Abrasions

- (i) 2 cm x 1 1/4 cm and 1 cm x 1 1/4 cm - left leg front
- (ii) 3 cm x 1 cm and 3 cm x 2 cm -left chest lateral side lower part
- (iii) 5 cm x 1 cm - left scapular region

(B) Incised wounds :

- (i) 10 cm x 2 cm cavity deep on the vault of head (both parietal bones), situated transversally across the parietal (6 cm on left and 4 cm on right cutting the underlying bone and the brain matters.

The doctor found presence of blood and blood clots in the cranial cavity. The injuries were ante-mortem in nature caused by hard and blunt substance and the incised wounds were caused by sharp cutting weapon. The death was due to, head injury, as a result of the above noted incised wounds since 12 hours to 36 hours prior to the time of the post-mortem examination. The post mortem report

is Ext. 5.

Similarly injured Guno Ram Mahto (informant) and his two brothers, namely, Mani Ram Mahto (PW 3) and Manki Mahto (PW 5) also sustained injuries on their persons. Their father Ramji Mahto was given blows with axe by appellant Asheshwar Mahto and with farsa by appellant Radha Mahto and was also assaulted with lathi by appellants Naresh Mahto and Tunnu Mahto (juvenile). When PW 3 and PW 5 along with the informant went to save their father, they were also assaulted by the appellants with their respective weapons, which they had possessed. PW 7 Dr. N.K. Singh on 9.5.1996 examined Manki Mahto (PW 5) and found the following injuries :

- (a) Lacerated injury over vault (scalp) - 1 1/2" x skin deep
- (b) Lacerated injury around left shoulder joint
- (c) Abrasion over left dorsum of wrist

All the injuries were caused by hard substance, simple in nature

On the same day Mani Ram Mahto (PW 3) was also examined and the following injuries were found on his person :

- (a) Lacerated injury over frontal region of head
  - (i) left side 1/5" x skin deep
  - (ii) Right side 1/2" x skin deep
- (b) Lacerated injury over parietal area of head
  - (i) Left - 1/3" x skin deep
  - (ii) Right - 1/5" x skin deep
- (c) Lacerated injury around upper occipital area adjoining to parietal bone 1 1/2 " x skin deep
- (d) Abrasion, in between two scapulae

All the injuries were caused by hard substance and were simple in nature.

The doctor also found the following injuries on the person of the informant Guno Ram Mahto :

- (A) Lacerated wound over left temporal region in between left eye and left ear-1/4 cm x skin deep, caused by hard substance.

The aforesaid Injury Reports are marked as Exts. 4, 4/1 and 4/2 respectively.

8. PW 4 Khirodhar Ganjhu (Sarpanch of Urba Panchayat), a hostile witness was also present at the place of occurrence and when hurling of brick bats started, he fled away. PW 2 Lakhan Mahto has deposed that in the alleged scuffle appellant Radha Mahto, Tunnu Mahto, Asheshwar Mahto and Naresh Mahto also sustained

injuries on their person. Thus, I find that the prosecution has explained the injuries sustained by the appellants in the alleged occurrence. The prosecution has not suppressed the injuries sustained by the appellants. On the other hand, fardbeyan (Ext. A) of Asheshwar Mahto was recorded on 10.5.1996 at 10.00 a.m. by the S.I. Ar-vind Kumar Choudhary (I.O.), subsequent to the fardbeyan (Ext. 1) of Guno Ram Mahto, recorded on 9.5.1996 at 22.30 hours. Ext. A is very clear that Ramgarh (Project) P.S. Case No. 113 of 1996 dated 10.5.1996 was registered against Manki Mahto, Guno Ram Mahto and Mani Mahto, all sons of Ramji Mahto (since dead) for the offence under Sections 341, 323 and 337/34 of the Indian Penal Code. As the injuries sustained by the appellants were simple in nature due to hurling of brick bats, hence the manner of the alleged occurrence has been substantiated by the prosecution witnesses. In that occurrence, the prosecution party were unarmed and were in the field in course of measurement whereas the appellants went to their home and came back armed with farsa, axe and lathi. In that situation Radha Mahto assaulted with farsa on the head of Ramji Mahto and appellant Asheshwar Mahto assaulted him with axe on his person whereas the others, name Naresh Mahto and Tunnu Mahto, assaulted him with lathi, in preplanned way, taking arms in their hands whereas the prosecution party hurled brick bats, causing simple injuries to the appellants. The appellants were aggressors, who caused murder of Ramji Mahto and injured PW 3 Mani Ram Mahto, PW 5 Manki Mahto and the informant Guno Ram Mahto. Thus, I find that the prosecution case in all respect regarding the genesis and the manner of the occurrence as well as the place of occurrence have been established without any major contradictions in the evidence of the eye witnesses. There is legal and reliable evidence of the injured ocular witnesses of the occurrence to substantiate the prosecution case beyond all reasonable doubts. The learned 1st Additional Sessions Judge, Hazaribagh, has meticulously considered the oral and documentary evidence, adduced by the prosecution, and having found the appellants guilty convicted them u/s 302/34 I.P.C. and further convicted the appellant Naresh Mahto u/s 323 I.P.C. Thus, I do not find any legal infirmity in the impugned judgment and order of conviction and sentence, passed by the learned 1st Additional Sessions Judge, Hazaribagh.

9. In the result, I find no merit in this appeal, which fails and is hereby dismissed. The judgment and order of conviction and sentence, passed by the learned 1st Additional Sessions Judge, Hazaribagh, in Sessions Trial No. 296 of 1996, against all the appellants, is hereby affirmed. Since appellant Nos. 1 Radha Mahto and 2. Naresh Mahto are on bail, their bail bonds are hereby cancelled and they are directed to surrender before the learned court below for service their sentences. At the same time, learned court below is also directed to take all coercive steps for apprehending appellants Nos. 1 Radha Mahto and 2 Naresh Mahto to serve their sentences.

Vishnudeo Narayan, J.

I agree.