
(2009) 03 JH CK 0081
In the Jharkhand High Court

Ram Das Choudhry and Others

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

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

Citation : (2009) 03 JH CK 0081

Hon'ble Judges : Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Judgement

R.R. Prasad, J.—All the appellants were put on trial to face charges under Sections 447, 379, 147, 148, 302/149, of the Indian Penal Code on the allegations that they in prosecution of their common object did commit murder of Chhatan Mistry. The trial court having found the appellants guilty for the said charges sentenced them to undergo life imprisonment u/s 302 read with Section 149 of the Indian Penal Code. Further they were sentenced to undergo rigorous imprisonment for two years u/s 147 of the Indian Penal Code. Both the sentences were ordered to run concurrently. However, no separate sentence was passed for the offence u/s 379 and 447 of the Indian Penal Code.

2. The case of the prosecution is that the informant Murari Mistry (P.W.13) when came to his field on 6.7.1984 along with his father Chhatan Mistry, who was having gun and also a bag containing documents relating to the land, they saw all the appellants variously armed present over there and of them, the appellant, Abhilakh Mahto was ploughing the field to whom Chhatan Mistry (the deceased) asked not to plough from the field as the case has been decreed in his favour. But Charitar Dubey, who in course of trial died, exhorted others to kill him and by saying so he fired shot which hit on the leg of Chhatan Mistry, as a result of which, he fell down and then all the appellants started assaulting him with lathi indiscriminately. Thereafter, Sita Ram Choubey and Charitar Dubey sat over the chest and started pressing it. Thereupon all the accused persons started dragging him who raised alarm and upon it informant came over there to rescue

him but he was also assaulted by the appellant Surya Deo Mahto and, therefore, he ran away from there raising alarm, upon which when villagers assembled, accused persons fled away by breaking the gun into pieces and also by taking away the bag. Thereafter when the family members as well as villagers came over there, they took Chhatan Mistry to Bishrampur Police Station on cot from where he was taken to Hospital where he succumbed to his injuries. There at State Dispensary Bishrampur, Fardbeyan (Ext.4) of Murari Mistry, son of the deceased was recorded on the same day, i.e, on 6.7.1984 at 2.30 P.M. and the matter was taken up for investigation by Nageshwar Prasad Singh (P.W.14) who held inquest over the dead body and prepared an inquest report (Ext.5) and then inspected the place of occurrence from where he seized broken gun and a bag under seizure list (Ext.6). Thereafter dead body was sent for post mortem examination which was conducted by Dr. Ranjan Kumar Pandey (P.W.12) who found the following injuries on the person of the deceased.

- (i) Multiple abrasions on the sizes varying from 1/2 " x 1/2 " x skin deep to 3" x 1/2" x skin deep on right knee and leg.
- (ii) Multiple contusions of the size varying from 3" x 1" to 5" x 1" on the right knee with swelling of the knee and fracture of right patellar bone.
- (iii) Oval lacerated wound 1- 1/2" x1" x 1/2 " on the middle of the left leg with ecchymosis around the wound.
- (iv) Contusions 3" x 1" and 3- 1/2 " x 1" on the left knee.
- (v) Incised wound 2- 1/2 " x 1- 1/2 " x 1/4 " on the upper part of the right side of the scrotum.
- (vi) Abrasion of the size 6" x 4- 1/2 " x skin deep on the right glottal region.
- (vii) Abrasion 1/2 " x 1/2 " on the lower part of the right side of the back.
- (viii) Lower part of the right arm and elbow swollen black in Colour with fracture of the obecranon process of the right ulnar bone.
- (ix) Abrasion 3" x 1" x skin deep on the middle of the left arm.
- (x) Multiple abrasions of the size 1/2 " x 1/2 " and skin deep to 1- 1/2 " x 1/2 " x skin deep on the left elbow and upper part of the left forearm.
- (xi) Incised wound of the size 1" x 1/4 " x bone deep on knuckle of the left index finger with fracture of the underlying bone.
- (xii) Black coloured defused swelling of the right side of the face.

3. Accordingly, Doctor issued post mortem examination report (Ext.3) with an opinion that death was caused by shock and haemorrhage. After completion of investigation, police submitted charge sheet, upon which cognizance of the offence was taken and in due course when the case was committed to the court of sessions, charges were framed against the appellants to which they pleaded

not guilty and claimed to be tried.

4. In course of trial, the prosecution has examined altogether 14 witnesses. Of them, Lalanji Vishwakarma (P.W.1) and the informant Murari Mistry (P.W.13) claimed to have seen the occurrence whereas P.Ws.4,5,7 and 8 claimed to have come to know about the occurrence and the name of the assailants from the deceased whereas P.W.11 has claimed that he was told about the occurrence not only by the informant but also by the deceased and has also claimed to have seen certain accused persons dragging the deceased. The trial court having placed its reliance on the testimonies of the witnesses as aforesaid did find the appellants guilty and hence recorded the order of conviction and sentence. Being aggrieved with that order this appeal has been preferred. Learned Counsel appearing for the appellants submits that the informant (P.W.13) in course of his evidence has only named three persons as assailants whereas P.W.11 claimed himself to be an eye witness cannot in the facts and circumstances have opportunity to see the entire occurrence when he had been informed about the occurrence by P.W.13 and that other witnesses, namely, P.Ws. 4, 5,7,8 and 11 claimed to have come to know about the occurrence and the name of the assailants from the deceased but the informant is conspicuously silent either in his fardbeyan or in his evidence over this matter and as such, the trial court should not have placed any reliance on any of the witnesses but the trial court without considering the material points showing untrustworthiness of the witnesses did record the finding of the guilt of the appellants and hence judgment of conviction and sentence is fit to be set aside.

5. Having heard learned Counsel appearing for the parties and on perusal of the record, we do find that P.W.1 and the informant (P.W.13) have claimed to have seen the occurrence as according to P.W.1 when he was ploughing a field, he saw the appellants, namely, Ganesh Mahto, Kanhai Mahto, Harihar Mahto ploughing a field and at that point of time when the deceased Chhatan Mistry came over there he asked them to plough the field only after the enquiry is made by the Circle Officer, upon which the appellant Munesh Mahto caught hold of him and Charitar Dubey (since died) fired shot hitting on the leg of the deceased, as a result of which he fell down and then Charitar Dubey sat over the chest of the deceased and then appellants, Munesh Mahto, Abhilakh Mahto and Sita Ram Choubey assaulted him with lathi. Thereafter the appellants, Sheo Dhari Mahto, Surya Deo Yadav, Sheo Pujan Mahto, Kanhai Mahto, Ganesh Mahto, Harihar Mahto, Bigan Mahto and Sudama Mahto and also two other persons took the dead body to some distance and when the informant (P.W.13) reached over there, he was also assaulted by Surya Deo Yadav and then Charitar Dubey took away his paper and also broke the gun into pieces and thereupon Munesh Mahto pushed lathi in the anus of the deceased. The evidence of P.W.1 does not seem to be consistent with the evidence of P.W.13, where he has testified that Charitar Dubey fired shot on the leg of his father, who fell down and thereafter the appellants, Abhilakh Mahto, Sheo Dhari Mahto, Ram Das Choudhary, Prem Nath Choudhary, Sheo Pujan Mahto, Harihar Mahto and Sudama Mahto started taking

his father towards forest. Thus, it is evidently clear that P.W.13 has not named any of the appellants who did assault the deceased whereas according to P.W.1, Munesh Mahto, Abhilakh Mahto and Sita Ram Choubey did assault the deceased when he fell down on the ground and this assertion of P.W.1 about the persons who did assault the deceased gets support from the evidence of P.Ws.4 and 7 and also from P.W.5, who has disclosed the name of assailant as Sita Ram Choubey and Abhilakh Mahto whereas P.W.8 had disclosed the name of assailant as Abhilakh Mahto and Munesh Mahto and also the name of other appellants, such as Sheo Dhari Mahto, Sudama Mahto, Bigan Mahto, Sheo Pujan Mahto but they have not been named as assailants by other witnesses. It would be worth while to note here that all the aforesaid witnesses have claimed to have derived the knowledge of the occurrence and also the name of the assailants from the deceased but such statement about the disclosure being made by the deceased to the aforesaid witnesses never find mentioned either in the evidence of P.W.13 or in his fardbeyan but that appears to be an omission as it would be evident from the medical evidence that none of the injuries found on the persons of the deceased were on vital parts, rather those injuries were found either on the leg or in the hands and in that situation, it can easily be assumed that the deceased may have been in sense when the witnesses came at the place of occurrence and, therefore, reliance can be placed on the testimonies of those witnesses, though there are some contradictions relating to the persons who did assault the deceased but names of the assailants could be confined to Sita Ram Choubey, Munesh Mahto and Abhilakh Mahto, who have been named by all P.Ws. 4, 5, 7 and 8 as the assailants who did assault the deceased. So far the appellants other than the aforesaid three persons are concerned, there is no consistent evidence that they did assault the deceased in any manner or did commit any other offence as alleged. Accordingly, they are acquitted of all the charges levelled against them.

6. However, having found the witnesses to be trustworthy on the point that Sita Ram Choubey, Munesh Mahto and Abhilakh Mahto did assault the deceased, who died, still in face of medical evidence question would be as to whether those three appellants can be held guilty for the offence u/s 302/149 of the Indian Penal Code as recorded by the trial court or u/s 302/34 of the Indian Penal Code ? From the medical evidence as has been recorded earlier, it does appear that Doctor did find as many as 12 injuries on the person of the deceased but none of the injuries was on the vital parts, rather all the injuries seem to be there either over the leg or on the hands. Moreover, Doctor (P.W.12) who held post mortem examination has never opined that those injuries caused on the person of the deceased was sufficient to cause death and hence, they can not be held liable for the offence of culpable homicide. That apart there is no evidence against them of committing other offences as alleged.

7. In that view of the matter, finding of the guilt of culpable homicide and also of other charges recorded by the trial court and also the order of sentence passed against Sita Ram Choubey,, Munesh Mahto and Abhilakh Mahto are hereby set

aside though they are held guilty for the offence u/s 323 of the Indian Penal Code. Accordingly, they are convicted and are sentenced for the period already undergone. So far other appellants are concerned, they are acquitted of all the charges levelled against them.

8. In the result, this appeal is allowed but in part.