
(2007) 08 JH CK 0072
In the Jharkhand High Court

Rameshwar Mahto

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302, 304, 307, 323, 34

Citation : (2007) 08 JH CK 0072

Hon'ble Judges : Dilip kumar sinha, J;Dhananjay Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Present criminal appeal is directed against the judgment of conviction u/s 302 of the Indian Penal Code, passed by 1st Additional Sessions Judge, Giridih in Sessions Trial No. 436 of 1993, whereby and whereunder, sole appellant Rameshwar Mahto was sentenced to undergo imprisonment for life.

2. Prosecution was launched on the statement of the informant P.W.-5 Narain Mahto (informant) before the officer-in-charge of Tisri Police Station on 24.2.1993 at about 6:00 p.m. stating, inter alia, that his brother Dwarika Mahto(since deceased) had lent Rs. 1200/- to the accused Arjun Mahto (absconder) and to realize the same his brother Dwarika Mahto demanded his money from Arjun Mahto near the grainery of one Dilo Mahto where altercation took place and it was alleged that Arjun Mahto / and Rameshwar Mahto(appellant) went to their house and carried a stick and a Farsa respectively, Beth shifted assaulting Dwarika Mahto at the khalian (grainery) of Dilo Mahta, The informant Narain Mahto, observing the occurrence from some distance, rushed there and simultaneously his father Janki Mahto(since deceased) also arrived there. He further alleged that Arjun Mahto assaulted his brother Dwarika Mahto and father Janki Mahto with sticks. He narrated that Arjun Mahto dealt stick blow on the head of his father Janki Mahto. His brother Dwarika Mahto and father Janki Mahto fell down sustaining injuries and became unconscious. The

witnesses arrived at the place of occurrence on alarm raised by the Informant Narain Mahto and his father Janki Mahto while was being carried for his treatment to Giridih, he succumbed the injuries. His brother Dwarika Mahto was brought by the villagers to the Giridih Hospital for treatment as he had also sustained bleeding injuries. On death of his father, the informant Narain Mahto took the dead body of his father Janki Mahto to the Tisri Police Station. It was more clarified in his statement that his brother Dwarika Mahto was assaulted by Arjun Mahto with stick whereas Rameshwar Mahto (appellant) inflicted blow with Farsa on the left knee. His father Janki Mahto was assaulted to death by Arjun Mahto (absconder) with stick. The informant Narain Mahto also sustained injuries inflicted by stick at the hands of Arjun Mahto. Tisri P.S. Case No. 9 of 1993 was registered on 24.2.1993 for the offence under Sections 323/307/302/34 of the Indian Penal Code against the Rameshwar Mahto (appellant) and Arjun Mahto. Dwarika Mahto was referred during his treatment from Giridih Hospital to Patliputra Medical College Hospital, Dhanbad where he succumbed. Investigating Officer visited the place of occurrence,, collected blood stained earth, Farsa, and piece of wood and prepared seizure list. He obtained injury report of Narain Mahto and post mortem report of Janki Mahto. He further collected injury report, inquest report and postmortem report of Dwarika Mahto and submitted charge-sheet against both the accused Arjun Mahto and Rameshwar Mahto for the offence under Sections 323/307/302/34of the Indian Penal Code but the charge was framed against both the accused only under Sections 302/307 of the Indian Penal Code, In course of trial the accused Arjun Mahto jumped the bail and could not be arrested in spite of processes issued against him and his record was split up by the order dated 28.7.2000.

3. Altogether ten witnesses were produced and examined on behalf of the prosecution. Besides, the prosecution proved the following exhibits:

Ext.1- Seizure list.

Ext.1/a- Signature of Babulal Yadav on seizure list.

Ext.1/b- Signature of Munshi Yadav on seizure list.

Ext.2- Signature of Kedar Mahto on inquest report.

Ext.2/a- Signature of Jago Mahto on inquest report.

Ext.3- Signature of the informant on the Fardbayan.

Ext.4- Fardbayan of Narain Mahto

Ext.5- Formal F.I.R.

Ext.6- Inquest report of Janki Mahto

Ext.7- Requisition for medical examination.

Ext.8- Inquest report of Dwarika Mahto.

Ext.9- Fardbayan recorded at Saraidhela P.S., Dhanbad

Ext.10- Post Mortem Report of Janki Mahto.

Ext.11- Post Mortem Report of Dwarika Mahto.

4. P.W.-1 Babulal Prasad Yadav, P.W.-6 Munshi Prasad Yadav and P.W.-5 Narain Mahto (informant) were produced on behalf of the prosecution as eye witnesses of the occurrence. P.W.-2 Chhotu Yadav was unfavourable to the prosecution. P.W.-3 Kedar Yadav and P.W.-4 Jago Mahto were the inquest witnesses. P.W.-7 Anjani Kumar Tiwari had investigated the case. P.VV.-8 Dr. Bhupendra Prasad Singh had held autopsy of Janki Mahto whereas post mortem of Dwarika Mahto was conducted by P.W.-9 Dr. Shalendra Kumar. P.W.-10 Guru Sahay Mahto was produced as hearsay witness.

5. Mr. Rabindra Prasad, learned Counsel appearing on behalf of the appellant Rameshwar Mahto, submitted that P.W.-1 Babulal Prasad Yadav and P.W.-6 Munshi Prasad Yadav, according to P.W.-5 Narain Mahto (informant), had appeared at the scene of occurrence on hearing alarm and., therefore, neither P.W.-1 Babulal Prasad Yadav nor P.W.-6 Munshi Prasad Yadav was the eye witness of the occurrence as no sooner did they arrive/ both the accused Arjun Mahto and Rameshwar Mahto had fled away. Yet, both the witnesses projected themselves as eye witnesses. P.W.-1 Babulal Prasad Yadav admitted while testifying that he had enmity with the appellant Rameshwar Mahto for the last 4-5 years and was an accused in the murder case of Tahal Mahto, who was the relative of both the appellant and the accused Arjun Mahto. Advancing his argument, learned Counsel, further submitted that the informant P.W.-5 Narain Mahto admitted by testifying that the appellant Rameshwar Mahto assaulted his brother Dwarika Mahto on the loft knee by inflicting single blow with Farsa and that the blow was never repealed and in this manner it can well be inferred that the intention of the appellant was not to commit murder as the injury if at all inflicted was no on any vital part of the body i.e. above waist In view of the above facts, conviction of the appellant Rameshwar Mahto, who is in custody for the last fourteen years u/s 302 of the Indian Penal Code is not sustainable. Appellant Rameshwar Mahto had not inflicted any injury on Janki Mahto so as to cause death. Learned Counsel pointed out vital contradiction in the statement of P.W. 1- Babulal Prasad Yadav with that of the testimony of the informant P.VV.-5 Narain Mahto. P.W.-1 Babulal Prasad Yadav testified in clear words that he along with the informant P.W.-5 Narain Mahto rushed to the place of occurrence to rescue the victim whereas the informant P.W.-5 Narain Mahto testified that the witnesses arrived at the scene of occurrence on hearing alarm and in view of that matter and fact the evidence of none of the two witnesses can be relied upon. Yet, the Trial Court ignoring this aspect convicted the appellant Rameshwar Mahto on the uncorroborated evidence of the informant Narain Mahto by any independent witness. Similarly, P.W.1- Babulal Prasad Yadav testified by admitted his enmity with the appellant Rameshwar Mahto as he was figured as an accused in the murder case of Tahal Mahto. Learned Counsel attracted our attention towards the statement of P.W.-6

Munshi Prasad Yadav who testified under cross-examination that he was facing the charge u/s 395 of the Indian Penal Code and that his brother Babulal and his father Jiten were accused in the murder case of Tahal Mahto and the said Tahal Mahto was the brother of the appellant Rameshwar Mahto and the accused Arjtm Mahto. In this manner, all the three witnesses who were produced and examined on behalf of the prosecution were partisan and interested witnesses, but the Trial Court without due care and caution convicted the appellant which is unsustainable. Learned Counsel exhorted that both the witnesses P.W.-1 Babulal Prasad Yadav and P.W.-6 Munshi Prasad Yadav made substantial development in their testimony before the Court which could be evident from the statement of the Investigating Officer P.VV.-7 Anjani Kumar Tiwari, who testified that none of the aforesaid witnesses in their statements recorded u/s 161 of the Code of Criminal Procedure had claimed to be the eye witness of the alleged occurrence. Finally, learned Counsel, submitted that the post mortem reports of deceased Janki Mahto and Dwarika Mahto are not disputed and from the perusal of the post mortem report of Dwarika Mahto it would be evident of stitched wound Y shaped 6 1/4" long and another Y prong 2 1/2 long. Twenty-one stitches were present in the longer Y prong. Five stitches were present in the shorter prong at the fronto parital junction towards right side and the longer prong went upto left temporo parital junction. Besides, stitched wound 1 1/2" long with four stitches over the front of left knee joint were found as the ante mortem wounds. Though Doctor proved the post mortem report Ext. 11 but he could not say the nature of weapon used on account of surgical interference in the wounds. In his opinion, death was due to aforementioned cranio cerebral injuries and not caused by the injuries in his left knee joint. The witnesses were consistent that the appellant Rameshwar Mahto had inflicted single injury on the knee of Dwarika Mahto(deceased) whereas other injuries were inflicted by Arjun Mahto on his head by stick and when the Doctor failed to pin point the nature of weapon used, the golden rule propounds that testimony of the eye witnesses shall prevail. Learned Counsel concluded his argument by submitting that the appellant is in custody for the last 14 years without legal evidence on the record and his appeal may be allowed by recording the order of acquittal.

6. Mr. V.S. Sahay, learned A.P.P. opposed the contention advanced on behalf of the appellant and submitted that P.W.-1 Babulal Prasad Yadav P.W.-6 Munshi Prasad Yadav and P.W.-5 Narain Mahto (informant) have consistently testified the complicity of the appellant Rameshwar Mahto of inflicting Farsha blow causing injury to Dwarika Mahto as a result of which he (Dwarika Mahto) succumbed on account of cumulative effect of all the injuries caused by stick at the hands of Arjun Mahto and by Farsa at the hands of appellant Rameshwar Mahto.

7. Having regard to the facts and circumstances of the case, we find that the P.W.-1 Babulal Prasad Yadav, P.W.-6 Munshi Prasad Yadav and P.W.-5 Narain Mahto, who have been projected as eye witnesses on behalf of the prosecution are consistent that the appellant Rameshwar Mahto had inflicted single blow with Farsa on the left knee of Dwarika Mahto and the co-accused Arjun Mahto had

dealt several blows of stick on the different parts of the body and that with the cumulative effect of such injuries, Dwarika Mahto succumbed. We find substance in the argument that when medical evidence is silent about the nature of weapon used in causing a particular injury to the victim, testimony of eye witnesses shall prevail. We further find that in his statement recorded u/s 313 of the Code of Criminal Procedure the appellant Rameshwar Mahto was confronted with the only incriminating material that he inflicted blow with Farsa on the left knee of Dwarika Mahto and not on any other part of the body. In the backdrop of the fact that the witnesses were consistent that the appellant Rameshwar Mahto had inflicted single blow with Farsa on the left knee of Dwarika Mahto and not on any vital part of his body, we are of the firm opinion that the conviction of the appellant Rameshwar Mahto for the charge under Sections 302/34 of the Indian Penal Code cannot sustain. We are of the firm belief that the appellant Rameshwar Mahto while inflicting Farsa blow had knowledge in his mind that such blow was likely to cause such bodily injury as was likely to cause death but the intention of causing death was lacking in view of the part of the body opted for causing injury which mitigated the culpability of homicide not amounting to murder, an offence under part-I of Section 304 of the Indian Penal Code. We further find that the appellant Rameshwar Mahto has already served out imprisonment for a period of fourteen years.

8. In the facts and circumstances of the case, we observe that the prosecution failed to prove the mens rea and culpability of the appellant Rameshwar Mahto of committing homicide amounting to murder, charge under Sections 302/34 of the Indian Penal Code. On the other hand, his culpability conies within the purview of homicide not amounting to murder, art offence punishable u/s 304 part-I read with Section 34 of the Indian Penal Code. 9. In the circumstances, the appeal is dismissed modifying the conviction u/s 304 part-I read with Section 34 of the Indian Penal Code and accordingly the appellant Rameshwar Mahto is sentenced for the period already undergone by him in jail, Who is there for about fourteen years, he is directed to be released from the custody forthwith if not wanted in any other case.