

(2012) 07 JH CK 0003

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 149 of 1992

Samsul Mian and Others

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 302, 34

Citation : (2013) 2 JLJR 243

Hon'ble Judges : R.K. Merathia, J;Jaya Roy, J

Bench : Division Bench

Advocate : Rajeeva Sharma, Sarfaraz Akhtar and Ms. Renuka Tripathi, for the Appellant; Ravi Prakash, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal arises from the judgment of conviction dated 7.3.1992 and order of sentence dated 9.3.1992 passed by the learned 3rd Additional Sessions Judge, Santhal Parganas, Dumka in Sessions Case No. 380 of 1986/197 of 1989, convicting the appellants under Sections 302/34 IPC, besides convicting the appellants no. 1 & 2-Samsul Mian and Amid @ Ayub Mian for the offence u/s 148 IPC, appellants no. 3 to 6-Gulam Mian, Lukman Mian, Chunu Mian and Ali Hussain for the offences u/s 147 IPC and sentencing them to undergo R.I. for life for the offence u/s 302/34 IPC and further sentencing the appellants no. 1 & 2 to undergo R.I. for two years for the offence u/s 148 IPC and appellants no. 3 to 6 to undergo R.I. for two years for the offence u/s 147 IPC. However, all the sentences were to run concurrently. The prosecution case in short is that the informant-Md. Ilias Ahmad (PW-3) lodged a fardbeyan on 3.8.1986 at about 3.00 PM to the effect that at about 6.30 AM in the morning he went to the field and found that his uncle-Yabu Mian (deceased) and his cousin-Yakub Ansari (PW-1) were ploughing the field. Soon thereafter, the appellant no. 1-Samsul Mian came and warned them not to plough the field and said that he will plough it. On which, they said that they are ploughing the land of their share. Then Samsul

started abusing them and threatened Yabu and went away. After sometime, he alongwith other appellants armed with weapons came there and started assaulting Yabu Mian (deceased), Yakub Ansari (PW-1) and the informant (PW-3) by surrounding them. Appellant-Samsul had Barcha in his hand, the appellant-Amid had bhala in his hand and the other appellants had lathi in their hands. Appellant-Samsul assaulted the deceased on his head by Barcha, appellant-Amid assaulted the deceased with bhala and other appellants assaulted the deceased with lathi. When the informant (PW-3) tried to save the deceased, he was also assaulted, due to which the informant became unconscious and fell on the ground and what happened thereafter, he did not know. Yabu was unconscious. It was alleged that the said occurrence took place due to the land dispute.

2. Learned counsel for the appellants assailed the impugned judgment on various grounds.

3. Counsel for the State supported the impugned judgment.

4. Prosecution examined six witnesses. PWs-1 & 3 have been projected as injured eye witnesses. PW-2 is a tendered witness and PW-4 is a formal witness. PW-5 is the doctor who conducted post mortem examination on the dead body of the deceased-Yabu Mian. PW-6 is the investigating officer.

5. After carefully going through the records and hearing the parties at length, we are inclined to give the benefit of doubt to the appellants as the prosecution has not been able to prove its case against the appellants beyond all reasonable doubts, so far as the manner of occurrence is concerned.

6. Admittedly, the alleged occurrence took place due to the land dispute. There was altercation between the parties. It further appears that one Etwari Mian suggested for panchayati and asked not to quarrel. Injury report in respect of the injury sustained by PWs-1 & 3 have not been brought on record. PW-3 (informant) said that after sustaining injury, he became unconscious. As per the doctor, the deceased had sustained stitch wound on his head caused by hard and blunt substance apart from one bruises on the right thigh. But as per the prosecution case, all the appellants assaulted the deceased. There appears great variation in the statement made by the informant (PW-3) in his fardbeyan and in his evidence, so far as the manner of occurrence is concerned. As per-PW-1, appellants-Samsul, Amid, Chunu and Lukman assaulted the deceased by hard and blunt substance. Samsul also assaulted the deceased by Pharsa on the head of Yabu (deceased). As per PW-3, the deceased was assaulted by appellants-Samsul & Abid by lathi on his head, where Lukman assaulted on his right leg. Samsul also assaulted the deceased by Pharsa causing head injury. PWs-1 & 3 specifically said that they were treated in the Government hospital, but their injury report has not been brought on record. In the facts and circumstances of this case, it will not be safe to treat PWs-1 & 3 as eye witnesses. In our opinion, prosecution has not been able to prove its case against the appellants beyond all reasonable doubts. Accordingly, this appeal is allowed. The judgment of

conviction and order of sentence as passed by the trial court against the appellants, is hereby set aside. Appellants are acquitted from the charges. Appellants are on bail. They are discharged from the liability of their respective bail bonds.