

(2007) 04 JH CK 0087

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 143 of 1996 (R)

Silla Mahto

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323, 325

Citation : (2007) 2 BLJR 2336 : (2007) 4 JCR 651

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : A.K. Sahani, for the Appellant; Shekhar Prasad Sinha, APP, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay and D.P. Singh, J.J

1. The sole appellant Silla Mahto has preferred this appeal against the judgment of conviction and order of sentence dated 13.5.1996 and 15.5.1996 respectively passed by Additional Judicial Commissioner, Khunti in S.T. No. 382 of 1985 whereby and whereunder the appellant stand convicted under Sections 302 of the Indian Penal Code and sentenced to R.I. for life.

2. Brief facts leading to this appeal are that in the afternoon of 16.6.1985 the informant Gyatri Kumari was going along with her mother Mangi Devi to local Hat. Further stated on the way to Manahatu Hat. Marsa Mundain wife of late Dudha Munda joined them for Hat. However when they reached near the hat the appellant along with Etwa Munda surrounded Marsa Mundain and asked why she has planted paddy in their field. Further stated they started assaulting the said Marsa Mundain respectively with long and short tangi in their hands on which her mother Mangi Devi raised alarm. Thereafter Etwa Munda and the appellant assaulted her mother also with the arms in their hands resulting severe injury on both the females. P.W. 1 Gyatri raised alarm on which people from the Hat as

well as on way chased the assailants. The other assailant chased her brother towards the Hat and in the meantime the appellant fled away leaving his tangi on the place of occurrence. The injury caused on both female resulted in their death.

3. Police was informed which arrived at the place of occurrence and recorded the statement of P.W. 1 on the basis of which Rania P.S. Case No. 23 of 1985 dated 16.6.1985 was registered u/s 323, 325, 302 of the Indian Penal Code against the appellant and said Etwa Munda but in the mean time Etwa Munda died. The police further prepared inquest report, seized the weapon of assault in presence of witnesses and sent the dead bodies for post mortem. The appellant was charge sheeted and put on trial on, which the appellant pleaded not guilty. However, after examining the witnesses, the learned trial court found and held the appellant guilty u/s 302 of the Indian Penal Code and sentenced him to serve R.I. for life.

4. The present appeal has been preferred mainly on the ground that the conviction of the appellant made on the basis of sole witness P.W. 1 was not warranted. It further mentions that P.W. 1 has contradicted her own statement before the police and during the trial. The learned Counsel for the appellant Mr. A.K. Sahani further pointed out that the injuries found on the dead bodies did not tally with the ocular evidence of P.W. 1. According to him P.W. 2 has been tendered while brother of the informant has not been examined without any explanation. Therefore the conviction of the appellant based upon sole evidence of P.W. 1 deserves to be set aside. It is also submitted that the appellant has remained in custody for about 12 years during trial and during the pendency of this appeal.

5. We have gone through the materials on record to consider the points raised by the counsel for the appellant. The prosecution version that the ladies were going to weekly hat at Manahatu along with the informant has not been disputed. The doctor P.W. 5/6 who conducted the post mortem, next, day found three incised wounds on the right and left parietal region of both the ladies caused by sharp cutting weapon resulting in death. In his opinion death was caused due to shock and hemorrhage. Eye witness of the occurrence P.W. 1 has supported her earlier version during trial, she was an student of 7th class when examined in September" 1986. According to her version deceased Etwa Munda as well as Silla Mahto assaulted them with weapons in their hands on head as well as right arm. She further stated that when her mother asked them why they were assaulting the lady, they gave blows with the weapon in their hands on her head The doctor has mentioned three injuries on the head of Mangi Devi. The appellant has repeated the blow on her head which has also been proved with the post mortem report vide Ext. 3/1. Therefore we find that only eyewitness of this occurrence has supported the manner in which assault look place on both the ladies in which this appellant along with deceased Etwa Munda has participated. The said tangi have been recovered by the I.O. same evening as per statement of P.W. 3 an eye witness and Mukhia of Manahatu. He asserted that in presence of witnesses

including himself, the I.O. has recovered blood stained tangi and Farsa vide Ext. 1/2. This witness has further asserted that another accused Etwa died in the Hat. He has signed over the fard beyan also and marked as Ext. 1/1. P.W. 2 Kalawati Devi has been tendered by the prosecution. According to this witness the house of the informant was at a distance of 40-50 yards from the place of occurrence. P.W. 1 has denied the suggestion that the dispute regarding jack fruit trees was pending between the family of the informant and the appellant. The reason behind this occurrence has been proved by this witness that they assaulted when the appellant and Etwa Munda has strong objection why Marsa Mundain planted paddy in the field belonging to them. This witness has asserted that many persons rushed towards the place of occurrence because of Hat day. P.W. 4 is formal witness, he has proved the writings of the I.O. Mumtaj Alam on the fard beyan, inquest, report and seizure list. The I.O. could not be examined as the occurrence took place in 1985 and the evidence continued till 1996.

6. The learned Counsel for the appellant has criticized the judgment on the following points;- firstly that in absence of I.O. defence was prejudiced, secondly that in absence of probable witness the trial court should have discarded the eye witness P.W. 1 and thirdly that the eye witness of the occurrence has given different version regarding the assault on the deceased. In this context, our attention has been drawn towards the fact that Silla Mahto was not alleged to have assaulted the deceased Marsa Mundain and Mangi Devi. However this suggestion appears not tenable in view of the specific assertion by P.W. 1 at para 2 when she asserted that after first assault by Etwa Munda the appellant gave another blow on Marsa Mudain on her head with tangi in his hand. She has stated specifically that her mother Mangi Devi asked them why they were assaulting Marsa Mundain, she was also assaulted by Etwa Munda and thereafter Silla Mahto assaulted on her head and this blow was repeated by Silla Mahto. The injuries found on Mangi Devi are all three caused by sharp cutting weapon. Therefore the version of eyewitness is supported by P.W. 5 in his post mortem report. We further do not find any reason why this child should come and depose without any apparent reason to implicate him falsely. She has identified her signature on the fard beyan along with P.W. 3. She identified the appellant in the dock. She has been cross examined at length in which her credibility stands unshaken. She has named her brother and Gangadhar Misshra etc. as the person who arrived at the place of occurrence. However it was for the police to name them as witness in the charge sheet. It does not mean that single eye witness cannot be relied even if the witness stands test of credibility and probability. Non examination of I.O. after 10 years of the occurrence cannot be a ground to discard the evidence of eye witness when there is no apparent contradiction in the earlier version and her statement during trial. We therefore, find that non examination of the I.O. has not prejudiced the defence in any manner. The occurrence took place stands further proved by circumstances that co accused Etwa Munda was found dead by police when it arrived at the place of occurrence that may be one of the reason why the brother of the informant and others

named by P.W. 1 are not coming forth to depose in the present case.

7. We further find that the learned trial court has considered all the circumstances in the impugned order vide para 10, 11, 12 and discuss the circumstances in which the trial remain pending after 1987 and lastly concluded in 1996. This also explains the non examination of the I.O.

8. Having considered the facts and circumstances mentioned above, we are of the opinion that the prosecution in the present facts and circumstances has been able to prove beyond doubts that the appellant Silla Mahto has committed the offences u/s 302 of the Indian Penal Code. In the result, this appeal stand dismissed and conviction and sentence passed against the appellant by the trial court is hereby confirmed.