

(2011) 01 JH CK 0016

In the Jharkhand High Court

Case No : Criminal Appeal (SJ.) No. 791 of 2002

Virenchi Mahatha and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 324

Citation : (2011) 1 JCR 508 : (2011) 8 RCR(Criminal) 2270

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

Dilip Kumar Sinha, J.—The instant Criminal Appeal is directed against the judgment of conviction and order of sentence recorded by Shri R.K. Srivastava, Additional Sessions Judge, F.T.C.-III, Bokaro in Sessions Trial No. 143 of 1996 by which the Appellants were convicted under Sections 324 and 148 of the Indian Penal Code. Each of the Appellants was sentenced to undergo rigorous imprisonment for a term of two years on each count with the direction that both the sentences would run concurrently.

2. The prosecution story in short was that the informant Bhaglukesh Mahatha presented a written report before Chandankiyari Police Station on 14.12.1995 alleging, inter alia, that on the same day at about 1 O'clock he had been to paddy fields appertaining to Khata No. 8, Plot No. 3305. Plots 3306 and 3310 to watch the crops but all on a sudden it was alleged that all the Appellants variously armed with sticks and knife arrived and began to abuse him. It is further alleged that in the same transaction the Appellant Natwar Mahatha @ Latan Mahatha dealt Lathi blows on his legs whereas the Appellant Virenchi Mahatha stabbed "Chhura" on his right arm causing bleeding injuries and it was the Appellant Sanjay Mahatha, who caused injury on his left ear. The assault was made to the informant in prosecution of their common object and the Appellants escaped on the arrival of the inmates of the house of Ram Prasad Mahatha, who arrived at the scene on hearing alarm. On the basis of the written report

Chandankiyari P.S. Case No. 116 of 1995 was instituted against the Appellants for the alleged offence under Sections 147/148/342/324/323 & 307 of the Indian Penal Code. After investigation the charge-sheet was submitted in the said Sections but the charge was framed against the Appellants only under Sections 148/307 of the Indian Penal Code. The defence of the Appellant was that the paddy fields in question belonged to them and the informant tried to harvest the paddy from their land stealthily to which the Appellants opposed and resisted giving rise to a counter-case against the informant of the instant case and the Appellant Virenchi Mahatha of this appeal was the informant in the counter-case.

3. The prosecution had examined only two witnesses and amongst them P.W. 1 Nitu Mahatha @ Nitai Mahatha was the son of the informant of the instant case and P.W. 2 was the informant himself. Besides the defence produced the sole witness Santosh Kumar, who was formal in nature, simply proved the rent receipt of the land which was marked Ext. A. Besides, the prosecution proved the signature of the informant on the written report Ext. 1 whereas Ext. A was the rent receipt, Ext. B the record of right (Khatian), Ext. C was the entire record of right, Ext. D being the F.I.R. of counter-case dated 14.12.1995, Ext. E being the charge-sheet of the counter-case and Ext. F was the certified copy of the order-sheets containing the orders dated 15.12.1995, 16.12.1995 and 25.07.2002 of the counter case proved on behalf of the defence. P.W. 1 Nitu Mahatha @ Nitai Mahatha testified that the occurrence took place on 14.12.1995 at about 1 O'clock while he was there in the adjacent field. His father had been there to the field and at that time when all the accused started beating his father, he went there on hearing "Hulla". His father first went to Police Station after sustaining injuries and from there to Hospital. His statement was also recorded by the Police. In the cross-examination, the witness admitted that at the relevant time he was standing in his own field which was adjacent to the place of occurrence. On demand he narrated the boundary of the field where he was standing and he also narrated the plot number of the field which was the place of occurrence. The place of occurrence was situated at the distance of 200 yards from the place where he was standing and it took 3/4 minutes to cover the distance. He had spotted blood at the spot but it was not shown to the police. He was apprized by his father that Virenchi Mahatha had assaulted him with knife, Natwar Mahatha @ Latan Mahatha assaulted with sticks on his legs and it was Sanjay Kumar Mahatha, who caused injury on his ear by pelting stone. The remaining accused had assaulted him with fists and kicks. He admitted that none else except him and his uncle arrived there at the place of occurrence. The witness further admitted that the accused of the case Virenchi Mahatha had instituted a case giving rise to Chandankiyari P.S. Case No. 115 of 1995 for the offence u/s 379/34 of the Indian Penal Code against him, his father and uncle and in that connection all the three were arrested and remanded to judicial custody. He expressed his ignorance as to which out of the two cases was instituted first point in time. The witness admitted that the case instituted by Viranchi was still going on against him and others in the Court of Judicial Magistrate which was at the stage of

evidence.

4. P.W. 2 Bhaglukesh Mahatha is the informant of the instant case, who testified that on 14.12.1995 while he was there in his field the accused came and started assaulting him. While dealing with specific attribution of the accused, the witness deposed that Virenchi Mahatha stabbed knife on his right arm, Natwar Mahatha @ Latan Mahatha dealt Lathi blow on his legs, Sanjay Kumar Mahatha inflicted injuries on his ear with some unknown object and again Natwar Mahatha @ Latan Mahatha assaulted him with sticks as a result of which he fell down on the earth. On hearing "Hulla", his brother Ram Prasad Mahatha and his son Nitu Mahatha @ Nitai Mahatha arrived and the accused escaped. He was treated at Chandankiyari Hospital and from there he was referred to Chas Referral Hospital. The witness corroborated his statement by testifying that he first went to the Police Station and delivered his statement and then he went to Hospital. He identified his signature on the written statement which was marked Ext. 1. He expressed his ignorance as to whether a counter-case was instituted by Virenchi Mahatha against him and further expressed ignorance as to whether he was sent to jail in connection with counter case or not. The witness admitted that the standing paddy were harvested from the Plot No. 3305 and 3306 but the paddy of the Plot No. 3304 were still standing whereas the paddy of the adjacent lands were already harvested. He admitted that no work was going on in or around the adjacent lands, and that none else except his brother and son came there at the place of occurrence to whom he apprized the occurrence and the cause of injuries sustained by him. Virenchi Mahatha had stabbed one injury with the help of knife. He did not communicate the occurrence to the "Panchayat" of the village. The witness admitted having no eye-witness of the occurrence except him and that he had conveyed the occurrence only to his brother and son. The witness fairly admitted that statement at the Police Station was given by his brother and not by him but in the same night his statement was recorded at the Police Station after his release from the Hospital at about 7 p.m. and he put his signature thereon. He had land dispute with Virenchi Mahatha and for that about 2/3 cases were going on. The accused had also instituted a case of assault against him but expressed ignorance as to whether allegation of theft was made against him. After examination of the witnesses, the accused were examined and their statements were recorded u/s 313 of the Code of Criminal Procedure. Each of the accused was confronted with the incriminating materials with specific question put to the accused Virenchi Mahatha that he inflicted stab injury on his right hand with knife to which he denied his guilt. The other accused also did not admit their guilt.

5. Learned Counsel appearing on behalf of the Appellant made short submissions that the prosecution though miserably failed to prove the charge against any of the Appellants u/s 307/148 of the Indian Penal Code but the trial Court without conscious consideration to the facts that none of the charges could be proved, convicted all the Appellants without any material whatsoever on the record. It was the specific case of the prosecution that the Appellant Virenchi Mahatha had

caused stab injury on the right arm of the informant by means of knife and that the informant was treated at Chandankiyari Hospital from where he was referred to the Referral Hospital, Chas for better management of his injuries but neither any medical evidence nor any Doctor who attended to the injuries of the informant could be produced and examined on behalf of the prosecution in support of the charge u/s 324 of the Indian Penal Code that the informant had actually sustained any hurt by means of an instrument for shooting, stabbing or cutting or any instrument which used as weapon of offence so as to attract the offence u/s 324 of the Indian Penal Code. As regards charge u/s 148 of the Indian Penal Code is concerned, it deals with rioting armed with deadly weapon which speaks.

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with Imprisonment of either description for a term which may extend to three years, or with fine, or with both

6. In the instant case, the prosecution miserably failed to prove that the informant had sustained injuries by any deadly weapon. A stick does not come within the category of deadly weapon, however, if it is used or intermittently dealt on the head, the same may cause fatal. But in the instant case there is no allegation that any blow of stick was dealt on any vital part of the informant including on his head and therefore the prosecution failed to prove the charge u/s 148 of the Indian Penal Code against the Appellants.

7. In the instant case neither the Investigating Officer nor the Doctor could be produced and examined on behalf of the prosecution as such the objective finding of the I.O. after visiting the place of occurrence could not be brought on the record and therefore, the manner of occurrence presented by the informant in his written report could not be corroborated so as to inspire confidence. The time of lodging of the F.I.R. has been given on 14.12.1995 at 13.50 hours. The informant clearly stated that his brother had given statement at the Police Station whereas his statement was recorded by the police on the same day at about 7 p.m. when he returned back from the Hospital. Therefore, the Court has reason to believe that the written report which was presented before the Police Station at about 1.50 p.m. on 14.12.1995 was not the statement of the informant. The informant clearly admitted in his cross-examination that there was no eye-witness of the occurrence except himself and he had narrated the occurrence to his son Nitu Mahatha @ Nitai Mahatha (P.W. 1) and his brother (not examined). According to the statement made on behalf of Appellants, the parties were agnates, guided by Mitakshara School of Hindu Law, all having share in the co-parcenary property with admitted land disputes going on for the last several years between the parties. I find from the record that the case instituted by the Appellant Virenchi Mahatha giving rise to Chandankiyari P.S. Case No. 115 of 1995 for the alleged offence u/s 379 of the Indian Penal Code against the informant and another was first point in time whereas the instant

case instituted by the informant P.W. 2 was the counter blast giving rise to Chandankiyari P.S. Case No. 116 of 1995 and I find and hold that the prosecution failed to prove its case beyond the shadow of all reasonable doubts.

8. In the facts and circumstances, a reasonable doubt is created as to the complicity of the Appellants and the prosecution failed to discharge its burden. Therefore, it can safely be held that the occurrence did not take place in the manner presented by the prosecution. In view of the above discussions, after giving them benefit of doubt the Appellants Virenchi Mahatha, Durga Prasad Mahatha, Ashish Kumar @ Ashish Kumar Mahatha, Sanjay Kumar Mahatha, Natwar Mahatha @ Latan Mahatha & Vidyasagar Mahatha are acquitted in Sessions Trial No. 143 of 1996 arising out of Chandankiyari P.S. Case No. 116 of 1995, corresponding to G.R. No. 1525 of 1995. The judgment of their conviction and order of sentence recorded by the Additional Sessions Judge, F.T.C.-III, Bokaro are set aside. Their bail bonds stand discharged.