

Lato Devi Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Nov-08-2017

Appellant : Lato Devi

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. M. P. No. 757 of 2017
Lato Devi Petitioner vs.

1. State of Jharkhand.

2. Taso Yadav

3. Baleshwar Yadav

4. Bhuneshwar YadavOpposite parties CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH HONBLE MR. JUSTICE B.B.MANGALMURTI For the Petitioner : Mr. Suraj Singh, Adv. For the State : Mr. Ashok Kumar No. 2, A.P.P For the Opp. Party nos. 2 to 4 : Mr. Binod Kumar Jha, Adv. 13/8.11.2017 Heard learned counsel for the parties.

2. Petitioner seeks leave to appeal against the judgment of acquittal passed by learned court of Additional Sessions JudgeVIII, Dhanbad in Session Trial No. 50/2002, whereby the accused persons/private opposite parties herein have been acquitted of the charges under Sections 324, 325, 148, 302/149, 307/149 of the

Indian Penal Code.

3. As per prosecution story, fardbeyan of informant, Lato Devi was recorded on 31st December, 1999 at Primary Health Center, Tundi inter alia alleging as follows: On 29th December, 1999 at about 12 O'clock in the afternoon, shegoats of Taso Mahto were grazing in potato field of the informant, which were driven away by the informant's sisterinlaw, Uma Devi (gotni), wife of Andu Yadav, who also complained it to the wife of Taso Mahto. On this, Tilki Devi, wife of Taso Mahto, Pushpa Devi, wife of Baleshwar Mahto, Kaushalya Devi wife of Bhuneshwar Mahto, Bundia Devi wife of Beni Mahto started abusing her. Villagers Girija Mahto and Bano Mahto came and convinced all as to why quarrel among themselves. In the meantime, Taso Mahto came and threatened them with dire consequence once the brothers also arrived. She however alleged that on the next day i.e. on 30th December, 1999 at about 4.00 pm, accused Baleshwar Yadav, Taso Yadav, Beni Mahto and Bhuneshwar Mahto came to the house of the informant and started abusing them. The fatherinlaw of the informant, Bhola Mahto protested and sought resolution of the matter through panchayati. The four accused persons

2. again came back with sword, garasa and tangi and threatened to kill all of them. In the meantime, Baleshwar Mahto, who was armed with tangi, assaulted on the head of Deg Lal Yadav inside the house of informant, as a result of which, he fell down. Beni Yadav and Bhuneshwar Yadav dragged the informant's fatherinlaw from the courtyard to the gali where Beni Yadav assaulted with sword and Bhuneshwar Mahto assaulted with lathi on the head, shoulder and leg, as a result of which, Bhola Mahto got seriously injured. Thereafter, wives of accused persons, namely, Tilki Devi, Pushpa Devi and Kaushalya Devi pelted stones and dashed the head of Bhola Mahto on stone. No one came for help even though the informant and others shouted. It is alleged that the accused persons had threatened the villagers also with dire consequence if they came for help. Thereafter, the informant along with one Govind Yadav took the injured Bhola, Deg Lal and Andu Mahto for treatment to Primary Health Center, Tundi where Bhola Mahto and Deg Lal Yadav died. All the male persons of the family were seriously injured in the occurrence, due to which there was some delay in lodging an F.I.R.

4. On the basis of Fardbeyan, Tundu P. S. Case No. 94/99 was registered under Sections 147, 148, 149, 323, 324, 448, 449, 307/302 of the Indian Penal Code on 31st December, 2012 against the above named accused persons and Beni Mahto, Tilki Devi, Kaushalya Devi, Bundia Devi, Pushpa Devi.

5. After investigation, Investigating Officer did not find the case true against Pushpa Devi and Tilki Devi and submitted chargesheet against the accused persons and one Beni Yadav for the same offences.

6. Cognizance was taken under these offences against the accused persons by learned Judicial Magistrate on the basis of police report and also against Beni Yadav. The case was committed to the Court of Sessions, Dhanbad on 23rd January, 2002 and thereafter transferred to the Court of Additional Sessions Judge, 11th, Dhanbad.

7. During trial, record of one of the accused Beni Yadav was split up and the trial proceeded against the rest accused as Beni Yadav had been absent since long. 3.

8. Defence, in their statements, pleaded innocence and false implication. According to the defence, they committed marpit among themselves and deliberately implicated the accused persons to grab the land.

9. Eight witnesses were examined by the prosecution. Angul Singh as P. W.1, Dinu Mahto as P.W.2, Lato Devi as P.W.3, Dr. Shailendra Kumar as P.W. 4, Ishwar Mahto as P.W.5, Jua Devi as P.W.6, Bhuneshwar Yadav as P.W.7 and Nand Kishore Prasad as P.W.8. Following documents have been exhibited on behalf of the prosecution: Ext. 1 Postmortem report of Bhola Mahto Ext.2 Postmortem report of Deg Lal Mahto Ext. 3 Fardbeyan Ext.3/1 Forwarding endorsement on the Fardbeyan Ext.4 Formal F.I.R Ext.5 Inquest report of Bhola Mahto Ext.5/1 Inquest report of Deg Lal Mahto The accused persons exhibited rent receipts as Ext.A & A/1 and certified copy of khatiyani as Ext.B.

10. During the course of examination P.Ws. 2, 5 and 7 turned hostile while P.W. 6, who is sisterinlaw (gotni of the informant) did not turn up for crossexamination. Therefore, her evidence has not been relied upon by learned trial court.

11. P. W. 3 is the informant; P.W.4 is the Doctor, who conducted the postmortem examination on the dead body of Bhola Mahto aged about 60 years, which was identified by Jitendra Prasad Yadav and Jamuna Yadav. He also conducted postmortem examination of Deg Lal Yadav son of late Bhola Mahto aged about 15 years. The following antemortem injuries were found on the body of two deceased persons: (1) Incised wound (a) 1/4"x 1/4"x scalp deep on the left side occipital region of 4. head (b) 1"x1/4"x scalp deep on the left side of occipital region 11/4" inside the injury of injury no.1 (c) 11/4"x 1/2"x bone deep on the left side of forehead (d) 2 1/2"x 1/2"x bone deep on the left side on the eye brow (e) 3 1/2"x 1/2"x bone deep on the back of right shoulder (f) 1"x 1/4"x muscle deep on the front of middle portion of left leg. (g) 3/4"x 1/4"x muscle deep on the left ring finger on the palm surface (h) 5"x1/5"x skin deep on the outer upper portion of left leg. (2) Abrasions (a) 1 3/4"x1 1/4" over right buttock (b) 1/2" x 1/2" on the inner side of middle portion of right leg (c) Left eye was black and swollen On dissection multiple fracture of occipital, parietal, temporal and frontal bones were found on the left side of head small sharp cut were also found on the frontal bone on left side underneath injury no. 1(c) and 1(d). Thick subdural hematoma was found defused all over surface of the brain on both side. Heart was empty. Stomach contained about 100 gram of undigested rice and bladder was partially filled with urine. All internal organ were pale. Time elapsed since death 12 to 24 hours Cause of death death was due to aforementioned cranio cerebral injuries caused by blows of heavy sharp cutting weapon. Report is in his pen and writing which is marked Ext.1 Postmortem report exhibited by the prosecution witness of Deg Lal Yadav.

5. (1) Incised wound 3 1/2x 1 1/4x brain deep on the right side of forehead. Brain matter came out of the wound. (2) right eye was black and swollen On dissection 3x1 sharp cut was found in the frontal bone through and through on the right side underneath injury no. 1. Multiple lines of fracture radiated from this wound revealing the frontal and parietal bone of both side. Brain matter was found come out from the gap of the fracture bone. Heart was empty. Bladder was empty. Stomach contained about 200 gram rice. Other internal organ were pale. Time elapsed since death 12 to 24 hours Cause of death death was caused due to above mentioned cranio cerebral injuries caused by blows of heavy sharp cutting

weapon. The Report is in his pen and writing which is marked Ext.2 12. P.W.4 who is the doctor, during his examination, has opined that the cause of death is cerebral injuries caused by blows of heavy sharp cutting weapon in respect of both the deceased. Time elapsed since death was reckoned 12 to 24 hours. 13. P.W.8 is the Investigating Officer, who has proved the writing and signature of Shatrughna Prasad, A.S.I, which is marked as Ext.3. Formal F.I.R is marked as Ext.4. Registration and endorsement on the Fardbeyan is marked as Ext.3/1. He has described the place of occurrence as house of Bhola Yadav situate at Guliadih. There were blood stain in the courtyard and in front of the main gate. He has also stated that he recorded the statement of the injured persons on 27th January, 2000 at PMCH, Dhanbad. Injured was Andu Mahto while Deg Lal Mahto and Bhola Mahto died during treatment. Inquest report was prepared by S. Prasad, which has been proved is marked as 6. Ext.5 & 5/1. 14. The Investigating Officer submitted the chargesheet after obtaining postmortem report and upon direction of the Senior Officer under the aforesaid offences. He stated that since the injured Andu was not in a condition to depose earlier, his statement was recorded on 27th January, 2000. No weapon was seized. He further stated that the accused persons have also lodged a case against the informant. 15. Defence witness no. 1 stated that land appertaining to Khata no. 17, plot no. 448, area 01 acre was recorded in the name of Heraman Mahto, Kartik Mahto and Kanho Mahto. Accused persons are legal heirs of Kartik Mahto and potato field is the khatiyani land of the accused persons. D.W. 2 reiterated the statement made by D.W.1 and proved the rent receipt as Ext.A. D.W.3 also stated that the land is recorded in the name of same persons and proved rent receipt as Ext.A/1. In his cross examination, he stated that Bhola and Deg Lal used to quarrel among themselves and the family members killed them. 16. Learned trial court found the testimony of the informant, P.W.3 inconsistent on the following counts: That according to Fardbeyan, the potato field was grazed on 29th December, 1999 and the occurrence took place on 30th December, 1999. She has stated before the Court that both the occurrence i.e., grazing of the potato field and the occurrence of marpit took place on 30th December, 1999 which contradicts her statement given in the Fardbeyan. She has further stated in examination in chief that injured were treated in the hospital but in the cross examination, she has stated that police

collected the dead bodies from the house. She also stated that at the time of occurrence, dead body was lying in the gali. The inquest report shows that the inquest report was prepared in the premises of Tundi Primary Health Centre. Certain inconsistencies in the description of the assault upon Bhola by Balwshwar with tangi, Beni and Taso assaulted Bhola with sword, has been also noted as she 7. failed to state as to on which part of the body, they were assaulted. The trial court also did not believe the statement of P.W. 3 that despite the fact that occurrence took place in the village at 4.00 p.m., on hulla no villager turned up to witness the occurrence, neither any one came forward to depose. There are no independent or interested witnesses. Uma Devi, wife of Andu Mahto, who has stated that goats of Taso Mahto were driven away from the potato field, also did not come to depose. The injured Andu Mahto who was a vital witness did not come to depose in support of the prosecution. Even the Investigating Officer, P.W. 8 stated that the injured Deg Lal and Bhola Mahto died during the course of treatment. All these statements of prosecution witnesses make the entire case of the prosecution doubtful. Accordingly, learned trial court acquitted the accused persons / opposite parties of the charges. 17. Learned counsel for the petitioner submits that the prosecution case can be established on the testimony of three witnesses, namely, the informant, P.W.3, the doctor, P.W.4 and Investigating Officer, P.W. 8 alone though other P.Ws. may not have come forward to depose or might have been rendered hostile. P.W. 3 being a rustic lady, minor inconsistencies in her statement should not be treated to have challenged the entire credibility of the informant, who was an eye witness to the occurrence. The evidence of medical witness itself shows the gruesome nature of assault by sharp cutting weapon which caused death due to shock and hemorrhage of the two persons, fatherinlaw of the informant and his 15 year old brotherin law. The Investigating Officer's testimony also corroborates the prosecution story. The learned trial court committed an error in acquitting the accused persons of such a serious charge. Therefore, he submits that the entire material evidence on record needs to be properly appreciated which can only be possible in appeal, if leave is granted. 18. Learned counsel for the opposite parties has opposed the prayer and reiterated the findings recorded by learned trial court in the 8. impugned judgment. He submits that the entire story built by P.W. 3, informant is rendered incredible as

there are inconsistencies and contradictions which goes to the root of the prosecution case. If the injured witness, Andu Mahto, son of deceased Bhola Mahto has not turned up as a witness before learned trial court and his wife Uma Devi and P.W.6 another sisterinlaw have also neither turned up nor supported the prosecution case, the prosecution has failed to prove the charges beyond all reasonable shadow of doubt. Therefore, the accused persons have rightly been given the benefit of doubt . In these circumstances, the instant petition deserves to be dismissed. 19. Learned counsel for the State has, however, supported the case of the informant/petitioner and question the findings of learned trial court on several counts. 20. We have considered the submission of learned counsel for the parties and gone through the impugned judgment and also the relevant material evidence of P.W. 3 specifically. Upon consideration of these facts and the evidence of record, we are of the considered view that leave to appeal should be granted in this case. We, however, refrain from expressing any opinion on the merits of the case of the parties lest it may prejudice their case before appellate court. Accordingly, prayer for grant of leave to appeal is allowed. The instant petition stands allowed accordingly. (Aparesh Kumar Singh,J) (B.B.Mangalmurti,J) jk