

Haroon Mian and ors. Vs. the State of Bihar

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Court : Patna

Decided On : May-13-1999

Judge : R.N. Sahay and D.P.S. Choudhary, JJ.

Appeal No. : Criminal Appeal No. 5 of 1987

Appellant : Haroon Mian and ors.

Respondent : The State of Bihar

Disposition : Appeal Allowed

Judgement :

R.N. Sahay and D.P.S. Choudhary, JJ.

1. These nine appellants before us were tried before the learned Sessions Judge, Deoghar, who having found them guilty convicted and sentenced them as under.

All the appellants have been convicted under Section 302/149, I.P.C. and sentenced to imprisonment for life Appellants Naseem Mian, Kurban Mian and Haroon Mian have further been convicted under Section 148, I.P.C., but no separate sentence has been imposed against them. The remaining appellants have been convicted under Section 147, I.P.C., but no separate sentence has been passed against them. Appellants Israil Mian, Ramjan Mian and Habib Mian were also convicted under Section 323, I.P.C., but no separate sentence has been

passed against them.

2. An affidavit has been filed that appellants Charku Mian died on 15th June, 1994 and appellant Bundel Mian died on 15th October, 1996. Hence this appeal has abated against them.

3. These appellants were tried for the murder of Budhan Mian in an occurrence which happened on 24th November, 1978 at village (Chitarpur) Korhia Tilla, P.S. Madhupur, in the district of Deoghar. Actually, the occurrence had taken place in a lane in front of the house of appellant Charku Mian (since deceased). The appellants and the deceased were the co-villagers.

4. On consideration of the evidence brought on the record by the prosecution, the learned Sessions Judge found the appellants guilty and convicted and sentenced them as indicated above.

5. On 24-11-78 at 4.30 p.m., Budhan Mian and his cousin Manager Mian after loading bundles of paddy on a Bullock-cart at their field had started for their house in the village and when they reached near the house of Charku Mian, the appellants came out of their house one by one with arms. Charku, Bundel and Naseem Mian emerged from the house of Charku Mian and were carrying lathi and Sabal. Appellants Israil Mian and Haroon Mian were holding swords. Appellants Ramjan Mian, Habib Mian and Hamid Mian who are the brothers came out of their house and they were armed with lathis'. All the appellants surrounded Budhan Mian and Manager Mian. Charku Mian called to assault Budhan Mian and Manager Mian. On this Naseem Mian, Kurban Mian assaulted Budhan with Sabal and Haroon struck Budhan with sword on his head. Budhan Mian fell down. Thereafter Ramjan called that Budhan should be killed. Manager Mian tried to intervene, but Ramjan struck him with lathi'. In the meantime, Budhan's mother Girija Bibi came to save him, when Israil Mian assaulted her on her head with 'Lathi'. Manager Mian raised Hulla and ran towards his own house and while he was running away, Habib Mian hit on his leg. Badruddin, Daud and Salim and others had witnessed the occurrence. After inflicting assaults and thinking that Budhan has died the appellants left the place of occurrence. Budhan Mian who had lost his senses due to massive assault was brought to the house of Manager

and as it became late and it was night no body went to the Police Station to report about the incident. On the next date i.e. on 25-11-78, Manager Mian, Jamadar Mian and Bashir Mian, a co-villager, were going to the Police Station, but on the way Badruddin came running and told them that Budhan has died. It is pertinent to mention here that Manager Mian and several other witnesses who were examined in this case were convicted for the murder of Chuna Mian, uncle of appellants 3 and 5. Some of the appellants were the witnesses in that case.

6. The defence case was that Budhan Mian has been killed either by some enemy or by his wife's alleged paramour and this opportunity was utilised to implicate the appellants. Some defence witnesses were also examined. Plea of ali-bi was also taken on behalf of appellant Haroon Mian that on the alleged date of occurrence, he was at the Anchal Office for participating in the settlement of the fair. There is consistent evidence that Budhan Mian was assaulted by the appellants. Dr. Shyam Sunder Daruka, Civil Assistant Surgeon, Sadar Hospital, who had performed autopsy on the dead body of the deceased found the following ante-mortem injuries:

- (i) lacerated wound 2' x 1' bone deep on the right side of head.
- (ii) Bleeding from none.
- (iii) Haematoma around right eye ball including upper eye lid.
- (iv) Lacerated wound 1 1/2' x 1/2' bone deep on the middle of the head.
- (v) Lacerated wound 1' x 1/2' x bone deep on the back of the head.
- (vi) Abrasion 3/4' x 1/4' on the left upper eye lid.
- (vii) Abrasion 3/4' x 1/4' on the left temporal region.
- (viii) Abrasion 3/4' x 1/4' on the left side of none.
- (ix) Abrasion 1' x 1/4' on the right fore-hand.

- (x) Incised wound 3/4' x 1/4' on the left fore-arm with fracture of the right radius and ulna.
- (xi) Lacerated wound 3/4' x 1/2' x skin deep on the left arm above the elbow.
- (xii) Abrasion 3' x 1/4' on the left scapular region.
- (xiii) Abrasion 1' x 1/4' on the right scapular region.
- (xiv) Abrasion 2' x 1/2' on the right side of chest.
- (xv) Incised wound 3/4' x 1/4' on the right leg below knee with fracture of the tibia and fibula bones.
- (xvi) Abrasion 3' x 1/4' on the right thigh.
- (xvii) Abrasion 3/4' x 1/4' on the left thigh.
- (xviii) Abrasion 1' x 1/4' on the left leg.
- (xiv) Abrasion 1/4' x 1/4' on the right knee.

Injury Nos. 10 and 15 were caused by sharp cutting weapon which might be sword and the rest were caused by hard and blunt substance such as lathi' and 'sabal' etc. The death was caused by shock and haemorrhage cumulatively by the above injuries, which were sufficient to cause death in ordinary course of nature. Injuries 2 and 3, namely, bleeding from nose and haematoma around right eye ball including eye lid were the effect of other injuries on the head.

7. The learned Sessions Judge has considered the evidence of the most important witnesses, namely, Manager Mian, in paragraph 10 of the judgment, which is extracted below:

The informant Manager Mian (P.W. 11) has described the entire occurrence in his evidence. He has said that he had lent the bullock-cart on hire to his cousin Budhan Mian, and on that day Budhan Mian had loaded his paddy bundles of the field in village Khuta Bandh, and both he (P.W. 11) and Budhan Mian, were driving and coming along with the bullock-cart loaded with the paddy bundles. His

evidence is that Daud Mian had also loaded his paddy bundles on his own cart and was bringing the same to the village and that Daud Mian's cart was going a little ahead of the bullock-cart carrying Budhan Mian's paddy. His evidence, as well as the evidence of P.W. 1 show that the main village-road runs from North to South, and the village lane meets this road on the west. The village-lane, starting from the village-road, goes east-ward then turns south and goes for about 50 to 60 yards, and then again goes east-ward. P.W. 11's evidence shows that when Budhan Mian's cart entered the lane and went east-ward and when it had turned south on the bend, all the accused-persons came out from the nearby houses and surrounded Budhan Mian and Manager Mian and started the assaults on the instigation of accused Charku Mian. He has said that Naseem Mian assaulted Budhan Mian with sabal on his leg as a result of which his leg was fractured (pair tut gaya) and Kurban Mian assaulted with sabal on his hand, Haroon Mian struck him with sword on his head. He has further said that Ramjan Mian called out saying that the fellow should be killed, and thereupon the other accused-persons assaulted him (Budhan Mian) with various weapons, which they were carrying. He has further said that on hearing the hulla, Budhan's mother came running and she was assaulted with lathi by Israil Mian and with sabal by Naseem Mian, as a result of which she also fell down. His further evidence is that when he tried to intervene, he was assaulted by Ramjan Mian with lathi and when he (P.W. 11) tried to run away, Habib Mian assaulted him on his leg with lathi, He says that he (P.W. 11) ran away and went to his house. The evidence of P.W. 11 regarding the assaults, is quite consistent with what he has stated in the F.I.R. except for one or two particulars. His evidence and the statement in the F.I.R. regarding investigation by Charku Mian, assaults on Budhan Mian by Naseem Mian, Qurban Mian and Haroon Mian and then calling on by Ramjan Mian that the fellow (Budhan Mian) should be killed, are quite consistent. Similarly, his evidence as well as his statement in the F.I.R. regarding the assaults on himself by Ramjan Mian and Habib Mian and assault on Girija Bibi by Israil Mian, are quite consistent. There are discrepancies on two points. Firstly, while P.W. 11 has stated in his evidence that on the call given by Ramjan Mian, all the accused-persons assaulted Budhan Mian, he has not said so in the F.I.R., and secondly in the F.I.R., he has not spoken about any assault by Naseem Mian on Girija Bibi. In my opinion, such

omissions can occur in normal course and cannot lead to the conclusion that Manager Mian has come forward with a cooked up story. Indeed, if Manager Mian had to narrate a cooked up story in the F.I.R. then he would be all the more careful to speak about the assaults by each and every accused instead of omitting assaults by some of the accused-persons. It has to be remembered that both Budhan Mian and Manager Mian had been way said in the village lane and Budhan Mian had been most brutally assaulted by the accused-persons, and it was only Manager Mian's luck which saved him from being subjected to such assaults. Obviously, therefore, Manager Mian must be under a sense of shock and a disturbed frame of mind. There is nothing strange or unusual, therefore, it at the time of giving his statement at the P.S. on the following day, one or two particulars got omitted.

The learned Sessions Judge had no difficulty in accepting the evidence of Manager Mian, His evidence was supported by Budhan's mother, Girija Bibi, an old woman of about 75 years who was also assaulted. The learned Sessions Judge has observed that the evidence of Girija Bibi appeared to be frank and truthful since she has not tried to rape all the accused. The evidence of Salim Mian, Badruddin Mian who were also eyewitnesses fully corroborates the testimony of Manager Mian and has been accepted by the learned Sessions Judge without any difficulty. The learned Sessions Judge was not impressed by the defence argument that the (sic) evidence of the eye-witness was not consistent on many points. It was argued on behalf of the defence that the version of the Manager Mian in the F.I.R., is not consistent with the medical evidence. Therefore, the prosecution story must be regarded as unreliable. It may be noted that the F.I.R. mentions only one Sabal assault by Nasim and one by Kurban and one by Haroon Mian, but medical evidence, speaks otherwise. The number and nature of injuries found on Budhan Mian are not consistent with the ocular evidence. The learned Sessions, Judge in paragraph 13 of his judgment has rightly observed that since Manager Mian himself was surrounded by the accused-persons and was subjected to assault, therefore, it was not possible for him to give cogent account of the entire occurrence. All the pertinent points raised on behalf of the defence has been able met by the learned Sessions Judge. We do not find any discrepancy in the judgment to persuade us to take a different view than the

learned Sessions Judge.

8. We have heard Sri P.N. Pandey in support of the appeal and Sri Shrinandan Prasad Singh on behalf of the informant and Sri Ashwini Kumar Sinha, for the State, Learned Counsel for the appellants has argued that though man there are many infirmities in the case such as delayed information to the police, none-examination of the Investigating Officer etc., but the confined his argument on the point as to whether the appellants have been rightly been convicted under Section 302/149, I.P.C. He submitted that there are large number of injuries on the person of the deceased, but none of the injuries can be said to be serious except the fracture which was not on the vital part of the body. It was contended that the occurrence had taken place in the evening, but no effort was made to shift the deceased to the hospital during the whole night and even in the next morning he was left to die in the house itself, without any medical treatment. Learned Counsel has contended that there was no intention by the appellants to cause any serious injury to the deceased and even the sword injury was in the hand. Three injuries on the head were only bone deep. It was argued that the prosecution has tried to suppress the material evidence because there was no reason as to why at a particular time, the appellants would combine to assault only Budhan Mian. Learned Counsel submitted that a lenient view may be taken in the matter of sentence since the occurrence had taken place in the year 1978.

9. We find force in the submission of Mr. Pandey that the appellants might not have intended to kill Budhan Mian which is fortified by the fact that according to the evidence, Charku Mian only gave a call to assault the deceased. It is surprising that the injured was not taken to the hospital or the dispensary for treatment for the whole night. Thus after considering all the pertinent aspects of the case, we are of the view that the evidence particularly the medical evidence does not bring the case of the appellants within the purview of Section 302/149, I.P.C. In our opinion, the seven appellants before us are liable to be convicted under Section 304, Part II, I.P.C. Their conviction under Section 302/149, I.P.C. is, therefore, set aside and they are convicted under Section 304, Part II/149, I.P.C. So far the question of sentence is concerned, since the occurrence had taken place 21 years ago, in our opinion, ends of justice will be served by imposing two

years rigorous imprisonment against each of them. The conviction of the appellants for the other charges is maintained, but no separate sentence is imposed. The bail bonds of all the appellants, except, Charku Mian and Bundel Mian is cancelled and they are directed to surrender before the trial Court to serve out the sentence. If the appellants do not surrender, the trial Court shall issue warrant of arrest against them. The learned Sessions Judge shall also enquire and report whether appellant Charku Mian and Bundel Mian have actually died and if they are really dead, no action is required, but if they are found to be alive, then the learned Sessions Judge shall send a report to this Court immediately.

10. For the reasons stated, this appeal is partly allowed to the extent indicated above. The appellants are directed to surrender to serve out the sentence as directed above. Their bail bonds are cancelled.

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