

Baldeo Mahto Vs. State of Bihar

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Court : Jharkhand

Decided On : Mar-02-2001

Reported in : 2001(3)BLJR2073

Judge : Deoki Nandan Prasad, J.

Appeal No. : Criminal Appeal No. 67 of 1995 (R)

Appellant : Baldeo Mahto

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

Deoki Nandan Prasad, J.

1. This Criminal appeal has been filed by the sole appellant against the judgment of conviction and order of sentence dated 22-7-1995 passed by the Additional Judicial Commissioner, Khunti, in Sessions Trial No. 375 of 1990/T.R. No. 206 of 1993 under which the learned Judicial Commissioner convicted the appellant under Section 304 (II) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years.

2. The prosecution case in brief as stated is that on 17-9-1989 at about 1.30 p.m., one Sikhar Mahto lodged a First Information Report stating therein that on 15-9-

1989 at about 6 p.m., his servant, Dukhan Swansi while returning back with the cattle, the appellant Baldeo Mahto assaulted his servant with lathi. It is also alleged that he had gone out of the village and when he returned back, he came to know about the occurrence from his wife. Accordingly, a case under Sections 341 and 325 of the Indian Penal Code was registered subsequently Section 304 of the Indian Penal Code was added as the injured Dukhan Swansi died in course of treatment. The police investigated the case and submitted charge-sheet accordingly against the sole appellant.

3. The appellant Baldeo Mahto appeared before the Additional Judicial Commissioner, Khunti and thereafter, charge under Sections 323, 341 and 304 of the Indian Penal Code was framed to which the appellant pleaded not guilty.

4. The witnesses were examined in the Court below and after hearing both the sides, the learned Additional Judicial Commissioner, Khunti, convicted the appellant and sentenced him to undergo seven years' rigorous imprisonment for seven years under Section 304 (II) of the Indian Penal Code.

5. On being aggrieved and dissatisfied with the impugned judgment, the appellant preferred this appeal claiming therein that the learned Additional Judicial Commissioner committed error in convicting the appellant as there is no eye-witness of the occurrence as well as the Investigating Officer was not examined in the case due to which the appellant/accused was not able to controvert the evidence of the witnesses who deposed otherwise to the statement under Section 161 of the Code of Criminal Procedure and, as such, the defence case has been prejudiced. It is also alleged that the deceased actually died due to the injury caused in the field when he fell down from the cattle and this fact was also corroborated by the witnesses which has not been looked into and considered by the Court below and, as such, the judgment impugned is fit to be set aside.

6. Obviously the informant is not an eye-witness of the occurrence as he came to know about the incident from his wife. P.W. 2 claimed to be an eye-witness of the occurrence. According to him, Dukhan Swansi, the deceased, when reached near the house of Ganesh Mahto, the appellant Baldeo Mahto who was standing with lathi, assaulted him with lathi. He further deposed that he came to know later on

that Dukhan Swansi died in the hospital. He stated in his cross-examination that he had also stated these things before the police. He denied that Sikhar Mahto, the informant, had actually stated about the incident to him, but admittedly the Investigating Officer, who could be the competent witness for controverting the suggestion, has not been examined by the prosecution.

7. P.W. 3 is also the hearsay witness and he had not seen the occurrence. P.W. 4 has been tendered by the prosecution.

8. P.W. 5 stated that Dukhan Swansi was actually on the back of the buffalo at the relevant time when the appellant Baldeo Mahto got the cattle run away, as a result of which, Dukhan Swansi fell down from the cattle and thereafter, he died. According to him, he had not heard that appellant Baldeo Mahto had assaulted him with lathi. He further deposed in his cross-examination that he along with Dukhan Swansi were coming after grazing the cattle. He further stated that Dukhan died after 14-15 days of the incident and he actually fell down on the boulder. He further stated that Dukhan was taken to hospital after three days of the occurrence. P.W. 6 is also a hearsay witness.

9. P.W. 7 is the Doctor who held post-mortem on the dead-body of Dukhan Swansi and found healed wound with scar 4 x 2 cm. on left front-parietal region of head situated vertically 1 1/2 cm. left to midline. According to him, the injuries were caused by hard blunt substance and the said injury can be caused by fall on hard surface.

10. The appellant/accused was also examined under Section 313 of the Code of Criminal Procedure and he denied the allegation. It is apparent that the Investigating Officer has not been examined in the case. According to P.W. 2, it was the appellant who assaulted the deceased with lathi and he denied that he came to know about the incident from the informant Sikhar Mahto. He had also stated before the police that he had seen the occurrence and this portion of suggestion by the defence has not been controverted as the Investigating authority, before whom the P.W. 2 stated under Section 161 of the Code of Criminal Procedure, has not been examined, whereas P.W. 5 stated to be an eye-witness of the occurrence and, according to him, the deceased Dukhan Swansi

actually died due to fall from the cattle, as a result of which, he sustained injury on the hard surface.

11. Learned Counsel appearing on behalf of the defence also drew my attention to the statement of P.W. 2 made under Section 161 of the Code of Criminal Procedure which is avail at. He in the case diary and it is submitted that actually P.W. 2 is not an eye-witness rather he came to know about the occurrence from the informant Sikhar Mahto which he had stated before the police and he had wrongly deposed during the trial.

12. However, it is obvious that the evidence of none of the witnesses has been corroborated and, as such, the whole incident, in the manner as alleged, becomes suspicious. It is well settled that even if there is slightest doubt about the occurrence then benefit will go in favour of the accused/appellant and the accused/appellant will be entitled for the benefit of doubts. It is manifest that the deceased was taken to the hospital after three days of the occurrence and also he died after 14-15 days of the occurrence in course of treatment. The evidence of P.W. 2 becomes very suspicious particularly when his testimony has not being controverted by the Investigating Officer. Thus, the accused cannot be put behind the Gars/into jail on the basis of single witness which is also not trustworthy. P.W. 5 also said to be an eye-witness claimed that the deceased sustained injury due to fall from the she-buffalo. Thus the whole prosecution case becomes suspicious. Moreover, when there are two versions of the prosecution case, the version inclining in favour of the accused will be taken into account and for which the accused will certainly get the benefit of doubt. Considering the above facts and circumstances, the accused-appellant is entitled to the benefit of doubts.

13. Having regard to the above facts and circumstances coupled with the evidence on record, I find that the prosecution has failed to establish the charge against the appellant beyond all reasonable doubts as required under the law.

14. In the result, I find merit in the appeal which is, accordingly, allowed. The appellant is hereby acquitted for the benefit of doubt. The judgment of conviction and order of sentence passed by the learned Court below is set aside. The appellant is on bail and, as such, he is also discharged from the liability of his bail-

bonds.

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