

Binod Mahto and Anr Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jul-27-2016

Appellant : Binod Mahto and Anr

Respondent : State of Jharkhand

Judgement :

1 Criminal Appeal (DB) No. 1807 of 2003 WITH Criminal Appeal (DB) No. 244 OF 2004 WITH Criminal Appeal (DB) No. 273 OF 2004 Criminal Appeal (DB) No. 1807 of 2003 with Criminal Appeal (DB) No. 244 of 2004 with Criminal Appeal (DB) No. 273 of 2004 [Against the judgment of conviction dated 25.11.2003 and order of sentence dated 29.11.2003 passed by Additional Sessions Judge, F.T.C.IV, Deoghar in S.C. No. 225 of 1992] 1. Bodi Mahto, son of Phutu Mahto, Resident of - Chopkiyari, P.S. Karon, Sub Division - Madhupur, District - Deoghar. ...Appellant [Criminal Appeal (DB) No. 1807 of 2003] 1. Binod Mahto, son of Tarni Mahto, Resident of - Village - Chopkiyari, P.S. Karon, SubDivision - Madhupur, District - Deoghar. 2. Janam Mahto, son of Tarni Mahto, Resident of - Village - Chopkiyari, P.S. Karon, SubDivision - Madhupur, District - Deoghar. ...Appellants [Criminal Appeal (DB) No. 244 of 2004] 1. Barmu Mahto, son of Bodi Mahto, Resident of - Village - Chopkiyari, P.S. Karon, SubDivision - Madhupur, District - Deoghar. ...Appellant [Criminal Appeal (DB) No. 273 OF 2004] V e r s u s The State of Jharkhand ... Respondent CORAM: HONBLE MR. JUSTICE PRADIP KUMAR MOHANTY HONBLE MR. JUSTICE D. N. UPADHYAY For the Appellants :Mr. Nityanand Prasad Choudhary, Advocate. Mr. Arvind Kumar Choudhary, Advocate.

[In Criminal Appeal (D.B.) Nos. 244 of 2014] For the State :Mr. Sanjay Kumar Pandey II, APP By Court Heard the parties. 2. These Criminal Appeals have been preferred against the judgment of conviction dated 25.11.2003 and order of sentence dated 29.11.2003 passed by Additional Sessions Judge, F.T.C.IV, Deoghar in S.C. No. 225 of 1992 whereby the appellants have been held guilty for the offence punishable under Section 302 IPC and sentenced to undergo R.I. for life. 2 Criminal Appeal (DB) No. 1807 of 2003 WITH Criminal Appeal (DB) No. 244 OF 2004 WITH Criminal Appeal (DB) No. 273 OF 2004. The facts in brief as it appears from fardbayan of Fogan Mahto (brother of deceased - Lilu Mahto) recorded in Karon Police Station on 09.07.1992 at 01.00 p.m. is that on 08.07.1992 his brother was returning home after purchasing cattle food and the informant along with Shashi Mahto was returning from their paddy field. Informant's brother Lilu Mahto (deceased) was moving ahead to them. When Lilu Mahto reached near the house of Bodi Mahto [Appellant in Criminal Appeal (DB) No. 1807 of 2003], suddenly the appellants and others appeared from the courtyard along with deadly weapons like Farsa, Sword, Tangi and Lathi in their hands and assaulted the deceased. Appellant Bodi Mahto assaulted Lilu Mahto by means of Tangi on his head. When the deceased tried to escape from there, appellant Janam Mahto assaulted him on his legs by means of Axe (Kulhari) as a result, he fell down and started wriggling. Thereafter, all the appellants started assaulting him till his death. On the basis of fardbayan of Fogan Mahto (brother of deceased - Lilu Mahto) recorded in Karon Police Station on 09.07.1992 at 01.00 p.m., Karon P.S. Case No. 78 of 1992 was registered. Investigation was carried out, attendance of appellants were secured. The Police after due investigation submitted chargesheet under Sections 147, 148, 149 and 302 of the Indian Penal Code. Accordingly, cognizance was taken and case was committed to the Court of Sessions and registered as S.C. No. 225 of 1992. To substantiate the charges, prosecution has examined altogether 12 witnesses including eye witnesses Learned Additional Sessions Judge, F.T.C.IV, Deoghar vide judgment of conviction dated 25.11.2003 and order of sentence dated 29.11.2003 in S.C. No. 225 of 1992, held the appellants guilty and inflicted sentence as indicated above for the offence under Section 302 Indian Penal Code and acquitted them from the charges under Sections 147, 148 and 149 Indian Penal Code with a finding that

P.Ws. 2 and 5 3 Criminal Appeal (DB) No. 1807 of 2003 WITH Criminal Appeal (DB) No. 244 OF 2004 WITH Criminal Appeal (DB) No. 273 OF 2004 are very clear, cogent trustworthy and both have corroborated each other. 4. Learned counsel for the appellants have assailed the Judgment on the following grounds: (i) nonexamination of Investigating Officer is fatal to the prosecution case as the appellants could not cross examine him regarding the place of occurrence; (ii) the court should not have relied upon the postmortem report as it was inadmissible under law because the doctor who has conducted postmortem examination, has not been examined. (iii) the conviction under Section 302 Indian Penal Code is bad in law since the Trial Court has acquitted the appellants under Sections 147, 148 and 302/149 of the Indian Penal Code and further acquitted six of the accused persons. Learned counsel for the appellants have relied upon the decision in the case of Sangam Lal Vs. State of U.P. reported in 2006(1) East Cr. Cases 293 (SC) and in the case of Champai Hansda Vs. State of Bihar (Now Jharkhand) reported in 2006(3) East Criminal Cases 219 (Jhr.). 5. Learned APP has opposed the arguments and argued that the evidence of P.Ws. 2 to 6 are cogent and intact. P.W.2 has specifically stated that all the appellants were armed with deadly sharp cutting weapons in their hands and they assaulted the deceased. Barmu was armed with Tangi, Janam was armed with Farsa and other accused persons were armed with lathi in their hands. Bodi Mahto assaulted the deceased on forehead by means of Tangi and due to this deceased sustained injury on his forehead and blood started oozing out. Barmu Mahto also assaulted the deceased by means of Tangi and Janam Mahto and Bulu Mahto assaulted the deceased by Farsa. The deceased fell down and after wriggling died on the spot. P.Ws. 3 and 4 are the villagers. P.W.5 is the brother and informant of the case and has supported the fardbayan given before the Police. P.W.6 has also 4 Criminal Appeal (DB) No. 1807 of 2003 WITH Criminal Appeal (DB) No. 244 OF 2004 WITH Criminal Appeal (DB) No. 273 OF 2004 deposed that the deceased was assaulted by the appellants by means of Tangi, Farsa and Lathi and deceased died on the spot. P.W.7 deposed that inquest report was prepared in his presence which is marked Exhibit2/3. P.W.8 deposed that blood stained soil was seized in his presence and he proved Exhibit2/1. P.W.9 deposed that he saw the appellants going from the place of incident after the occurrence and that the appellants were holding Farsa,

Tangi and Lathi in their hands. There is no illegality and infirmity in convicting and sentencing the appellants under Section 302 of the Indian Penal Code. 6. Perused the lower court records and gone through the Judgment cited by the appellants minutely. From perusal of the records, it appears that all the witnesses have deposed that the appellants were having sharp cutting deadly weapons and lathi in their hands and there is no material to disbelieve the evidence of prosecution witnesses but the trial court has acquitted the appellants under Section 302/149 Indian Penal Code and sentenced them to undergo imprisonment for life under Section 302 Indian Penal Code. Originally the charge was framed under Section 302/149 Indian Penal Code and also separate charge was framed under Section 302 Indian Penal Code simplicitor against all. This Court has examined the matter in the light of Judgment cited by the appellants. The postmortem report has not been proved by the Doctor who conducted postmortem nor by any other Doctor or by a technical person. It was proved by an Advocate Clerk. The Trial Court has relied upon the postmortem report and convicted the appellants. In the instant case, the investigating officer has also not been examined and the responsibility was shifted to one another. In that occasion, the accused/ appellants had no opportunity to cross examine the Doctor and the Investigating Officer. There is no material before the Trial Court to the effect that the fatal blow was given by whom and which of the injury caused to the deceased proved fatal. Since the postmortem report has not been proved by the Doctor who conducted autopsy and no competent medical officer has come forward to prove the 5 Criminal Appeal (DB) No. 1807 of 2003 WITH Criminal Appeal (DB) No. 244 OF 2004 WITH Criminal Appeal (DB) No. 273 OF 2004 postmortem report, there is no material before the Court that death was occurred due to the injuries and the injuries were antemortem. The learned trial court has acquitted all the accused persons including appellants from the charge framed under Section 302/ 149 of the Indian Penal Code. The learned Additional Sessions Judge has framed charge under Section 302 of the Indian Penal Code simplicitor against all the accused including the appellants but acquitted six out of them and held the appellants guilty under Section 302 of the Indian Penal Code simplicitor without seeking help of Section 34 of the Indian Penal Code. In the preceding paragraphs it is also indicated that the doctor who conducted postmortem examination has not been examined and

postmortem report has formally been proved by an advocate clerk. It is not established as to which of the blow given by which of the appellant was fatal. It is also not indicated out of the injuries sustained, which of the injury was the reason behind death. In a case where charge framed under Section 302/ 149 of the Indian Penal Code fails for any reason and the number of convicts is more than one and it is not specific as to which of the injury inflicted by which of the convicts was fatal, it would be safe to take help of Section 34 of the Indian Penal Code if the Court wants to hold more than one accused guilty. In the case at hand, number of appellants are four, charge under Section 302 of the Indian Penal Code against them was framed but the lacunae is that postmortem report has not properly been proved by a competent medical officer, the Doctor who conducted autopsy, did not step in the witness box, the deceased was having more than one injuries on his person, the prosecution has failed to make it specific as to which of the blow given by which of the accused was fatal and, therefore, conviction of the appellants under Section 302 of the Indian Penal Code simpliciter without taking recourse to Section 34 of the Indian Penal Code, the conviction and sentence recorded by the Trial Court cannot be sustained. Therefore, this Court is of the view that the appellants should not have been convicted under Section 302 6 Criminal Appeal (DB) No. 1807 of 2003 WITH Criminal Appeal (DB) No. 244 OF 2004 WITH Criminal Appeal (DB) No. 273 OF 2004 of the Indian Penal Code and the Trial Court is not justified in holding them guilty for the offence punishable under Section 302 of the Indian Penal Code. The ratio which we have followed, shall be clear from the Judgment rendered in the case of Sangam Lal Vs. State of U.P. reported in 2006(1) East Cr. Cases 293 (SC). 7. After considering the submissions of learned counsel for both the parties, this Court is of the view that the trial court is not justified in convicting the appellants under Section 302 Indian Penal Code. As such, all three criminal appeals are allowed and the judgment of conviction dated 25.11.2003 and order of sentence dated 29.11.2003 passed by Additional Sessions Judge, F.T.C.IV, Deoghar in S.C. No. 225 of 1992 is hereby set aside. The appellant Bodi Mahto [in Cr. Appeal (D.B.) No. 1807/03] who is in jail, is directed to be released forthwith, if not wanted in any other case. The appellants Binod Mahto and Janam Mahto [in Cr. Appeal (D.B.) No. 244/04] and appellant Barmu Mahto [in Cr. Appeal (D.B.) No. 273/04] who are on bail, are discharged

from the liability of their bail bonds. The trial court shall also be intimated of the outcome of the instant appeal. (Pradip Kumar Mohanty, J.) (D. N. Upadhyay,J)
Jharkhand High Court, Ranchi Dated the July 27, 2016 RC /A.F.R.

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