

Abul Mian and Others Vs. the State of Jharkhand

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Court : Jharkhand

Decided On : Nov-08-2011

Judge : R.K. Merathia & D.N. Upadhyay

Appeal No. : Criminal Appeal (DB) Nos. 304, 320 & 321 of 2001

Appellant : Abul Mian and Others

Respondent : The State of Jharkhand

Judgement :

1. All these three appeals have arisen out of common judgment and sentence dated 18.07.2001 passed in Sessions Case No.190 of 1994 and Sessions Case No.15 of 1998 by the learned Sessions Judge, Dumka convicting the appellants under Section 396 I.P.C. and sentencing appellant Abul Mian and Badruddin Mian to undergo rigorous imprisonment for life and appellant Moti Mian to undergo rigorous imprisonment for ten years.

2. All the three appeals were heard together. Both the aforesaid Sessions Trials were amalgamated. Altogether 13 witnesses were examined in Sessions Trial No.190 of 1994 and altogether 8 witnesses were examined in Sessions Trial No.15 of 1998. Out of all the examined witnesses some witnesses were common.

3. The prosecution case, in short, is that in the night of 21/22.06.1993 the informant Hatim Ansari (deceased) was sleeping in his house along with his wife. He woke up by the sound of jumping of somebody in his house by scaling

boundary wall. The person who trespassed opened the door from inside. The appellants and other entered into the house and demanded keys of the box. Abul Mian enquired regarding father of the informant. When the keys were not handed over, a bomb was thrown on informant by appellant Abul Mian which hit him on the right side of stomach above waist resulting in injuries. Thereafter due to fear he asked his wife to hand over the keys. The accused persons went inside the house and ransacked it. They assaulted by lathi and were asking about old money and ornaments. After half an hour all the dacoits moved away blasting bombs. Appellant Abul Mian threatened him of dire consequences if he disclosed their names to anyone. The informant died during treatment after 7 days of the incident. In the F.I.R. the details of ornaments and cash said to have been looted is mentioned. It is lastly said that there was enmity between the informant and appellant Abul Mian for land due to which the said dacoity was arranged.

4. Mr. Mahesh Kumar Sinha, learned counsel appearing for the appellants assailed the judgment on various grounds whereas Mr. R. Mukhopadhyay, learned counsel appearing for the State supported the impugned judgment.

5. After hearing the parties and going through the records carefully, in our opinion prosecution has not proved its case beyond all reasonable doubts. All the witnesses have turned hostile except PW-10 Rasikan Bibi (PW-1 in Sessions Trial No.15 of 1998). She claimed herself to be the eye witness. She is the mother of the informant. PW-11 (PW-8 in Sessions Trial No.15 of 1998) is the doctor. PW-12 Md. Isaque (PW-6 in Sessions Trial No.15 of 1998) is father of the informant. PW-13 Sudeshwar Sharma (PW-7 in Sessions Trial No.15 of 1998) is the I.O. of the case.

6. There is no mention in the F.I.R. about the presence of PW-10 Rasikan Bibi. It was specifically mentioned in the F.I.R. that wife of the informant was present but she has not been examined. PW-12, father of the informant, is a hearsay witness. PW-11, the doctor has supported the factum of death of the informant by explosive injuries. The I.O. has said that he found sign of blasting of bombs in the house and on the road but he also said that he did not seize any such article. He said that he found some papers scattered in the house but he did not find other articles in the

house scattered. Though F.I.R. was lodged immediately in the morning but no recovery of any alleged looted articles or cash has been made in this case. It is true that even the hostile witnesses have supported the factum of bomb explosion but they have not said as to who have caused bomb explosion. PW-5 and PW-7 have been named in the F.I.R. but they have also turned hostile. Admittedly there is land dispute between the parties and they are relatives. Therefore, in our opinion the prosecution has not been able to prove the manner of occurrence as alleged. In such circumstances we are left with no option but to give benefit of doubt to the appellants.

7. In the result, these appeals are allowed. The impugned judgment passed in Sessions Case No.190 of 1994 and Sessions Case No.15 of 1998 by the learned Sessions Judge, Dumka is set aside. Appellants Badruddin Mian and Moti Mian are discharged from liabilities of their respective bail bonds. Appellant Abul Mian, who is in jail, is directed to be released from jail, if not wanted in any other case.

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