

(2009) 10 JH CK 0005
Jharkhand High Court
Case No: None

Raju Mahto, Laldeo Mahto,
Manger Mahto and Jagdish
Mahto

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Oct. 14, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 144, 147, 148, 149, 307

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Judgement

Pradeep Kumar, J.

The appeal is directed against die judgment of conviction dated 20.6.2002 and order of sentence dated 22.6.2002

passed by Shri Rajesh Kumar Dubey, 1st Additional Sessions Judge, Giridih in Sessions Trial No. 103 of 1996, by which judgment he found the

appellant Nos. 1 & 3, namely, Raju Mahto and Manger Mahto guilty under Sections 307 of the Indian Penal Code and sentenced them to

undergo R.I. for 10 years. He also found the appellants 2 & 4, namely, Laldeo Mahto and Jagdish Mahto guilty under Sections 144, 341 and 447

of the Indian Penal Code beside Sections 307/149 of the Indian Penal Code and convicted them to undergo R.I. for 1 year u/s 144 of the Indian

Penal Code and convicted them to undergo R.I. for 10 years under Sections 307/149 of the Indian Penal Code.

2. It is submitted by the learned Counsel for the appellants that it will appear from the evidence and from the prosecution witnesses that there is

admittedly land dispute between both the parties and due to which the appellants have falsely been implicated in this case. The eye witnesses i.e.

P.Ws. 1 & 2, who were not present at the place of occurrence and as much the trial court has wrongly convicted the appellants.

3. On the other hand, learned Counsel for the State has opposed the prayer and submitted that all the prosecution witnesses have supported the

prosecution case and the prosecution has fully been corroborated by the evidence of the doctor, who has proved the injury on the version of the

informant, Mukhlal Mahto (P.W. 6) and own brother of the informant Gariesh Mahto (P.W. 4) as such then conviction is well founded and

requires no interference by this Court.

4. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a written report given on

26.12.95 at about 14.10 hrs. by the informant, Mukhlal Mahto (P.W. 6) stating therein that on 26.10.1995, at about 9.00 a.m. in the morning

when he was cultivating his field along with his brother Ganesh Yadav then accused, Raju Mahto, Laldeo Mahto son of Seva Mahto, Manger

Mahto, Babulal Mahto and Jagdish Mahto along with Laldeo Mahto son of Manger Mahto, came to the field with variously armed and asked them

why they are cultivating their land and said that they will commit their murder and saying so suddenly accused-appellant, Raju Mahto with Tangi in

his hand gave a tangi blow on the head of Ganesh Mahto. Thereafter, the accused-appellant, Manger Mahto, who had Farsa in his hand, gave

farsa blow on his head, due to which he fell down on the ground and became unconscious. Thereafter, the accused-appellant, Luldeo Mahto

assaulted him on his head, causing injury. Thereafter, Sewa Mahto and Manager Mahto, who had Tangi and Farsa assaulted the informant and his

brother, Ganesh Mahto and Jagdish Mahto, Laldeo Mahto and Babulal Mahto, who had lathi in their hands they assaulted him.

5. On the basis of a written report the police registered a case under Sections 147/148/149/323/324/307/341/447 of the Indian Penal Code and

after investigation submitted charged under Sections 147/148/149/323/324/307/341/447 of the Indian Penal Code.

6. Since the case was exclusively triable by a court of Sessions, the same was committed to the court of Sessions and subsequently the case was transferred to the court of 1st Additional Sessions Judge, Garhwa, who conducted the trial and found the appellants guilty as aforesaid.

7. It appears that in course of trial the prosecution has examined 8 witnesses. P.W.1, Barhan Yadav. P.W. 2, Chulbul Yadav. P.W. 3, Dhalo

Yadav P.W. 4, Ganesh Mahto. P.W. 5, Manoj Kumar Singh, S.I. P.W. 6, Mukhlal Mahto, informant. P.W. 7, Dr. Subodh Singh, who proved

the injury report of all the injured witnesses and P.W.8, Kameshwar Prasad, a formal witness. The defence has also examined 2 witnesses,

namely, D.W. 1-Kailash Ral and D.W. 2,-Khago Mahto.

8. P.W 1, Barhan Yadav stated that he was present in the wheat field at some distance when he saw accused, Raju Mahto and Manger Mahto

came there along with Laldeo Mahto son of Manger Mahto, Laldeo Mahto son of Sewa Mahto, Jagdish Mahto, Babulal Mahto came there and

asked the informant and his brother not to cultivate the field. Thereafter, Raju Mahto gave a tangi blow on the head of Ganesh Mahto. Thereafter,

Manger Mahto gave a farsa blow on the left leg of Ganesh Mahto Subsequently Laldeo Mahto son of Manger Mahto gave rod blow on head

of informant, Mukhlal Mahto.

In para 8, in his cross-examination, he stated that he is accused in a case lodged by accused, Jagdish Mahto He also admitted in para 13 that

Ganesh Mahto and Mukhlal Mahto fell down then all the accused persons assaulted him with lathi.

P.W. 2, Chulbul Yadav also stated that when he reached near the field he saw accused Raju Mahto with tangi assaulting on the head of Ganesh

Mahto. Thereafter, Manger Mahto with farsa assaulting on his left leg. Whereupon he fell down then accused, Laldeo Mahto son of Manger Mahto

assaulted on the head of the informant, Mukhlal Mahto by rod. Thereafter, other accused persons assaulted him

In para 11, in his cross examination, he stated that the disputed land is tandoor and rice field both.

P.W. 3, Dhalo Yadav also stated the same thing.

P.W. 4, Ganesh Mahto, the injured witness, he also stated that he was assaulted by Raju Mahto with tangi on his head. Thereafter, Manger Mahto

assaulted with farsa on his left leg. Thereafter, Laldeo Mahto son of Manger Mahto assaulted the informant, Mukhlal Mahto with rod on his head.

P.W. 6, Mukhlal Mahto, informant has also fully supported the prosecution case, he said that he was assaulted by Laldeo Mahto son of Seva

Mahto by rod on his head.

P.W. 7, Dr. Subodh Singh, who examined the injured witnesses on 26.12.1995 himself and stated that on the person of injured, Ganesh Mahto

(P.W.4) he found that the following injuries:

(1)(a) Incised wound on vertex of head 2.5cm. x 3 cm x skin deep upto the bone,

(b) 1.5 cm. x 3 cm. x skin deep and sign of internal injury in the brain present like restlessness; vomiting, unequal pupils so life is dangerous. He also

found:

(a) Incised wound on left lower leg below the knee joint 5 cm. x 5 cm. x 1.5 cm.

(b) Abrasion 2.5 cm. x 1.5 cm. on right knee.

The opinion of the doctor that injury No. 1, which was grievous in nature while injury No. 2, which was simple in nature, caused by sharp cutting

weapon. He also examined the informant-P.W.6, Mukhlal Mahto and found:

(i) Incised wound on vertex of head size 1.5 cm. x 2.5 cm. x 5 cm.

(ii) Haematoma 2.5 cm. x 1.25 cm. around chest, which was caused by sharp cutting weapon, simple in nature.

9. Thus, after going through the prosecution witnesses, I find that all the prosecution witnesses have supported the fact that appellant No. 1, Raju

Mahto assaulted the injured, Ganesh Mahto with tangi on head and appellant No. 3, Manger Mahto assaulted the injured with Farsa on the

left leg, causing serious injury, which was dangerous to life and as such the conviction of appellant No. 1, Raju Mahto and appellant No. 3,

Manger Mahto, which has been corroborated by the ocular as well as by medical evidence is sustainable and has been proved beyond all

reasonable doubt and as such their conviction u/s 307 of the Indian Penal Code is maintained. However, as far as the assault, which has been

alleged by the informant against appellant No. 2, Laldeo Mahto and appellant No. 4, Jagdish Mahto are concerned, I find that the medical report

does not support the same since as per the informant (P.W.6) he was assaulted by Laldeo Mahto son of Sewa Mahto by rod on his head.

Thereafter all the accused persons assaulted him with lathi and rod, causing injury on his head, waist and back bone. While P.W. 1, Barhan Yadav

stated that the informant was assaulted with rod by Laldeo Mahto son of Manger Mahto

10. Thus, it is difficult to say that as to who assaulted the informant Laldeo Mahto son of Sewa Mahto or Laldeo Mahto son of Manger Mahto As

stated by P.W. 7. the injury received on the persons of the informant is also simple in nature.

11. In that view of the matter, the appellant Nos. 2 and 4, namely, Laldeo Mahto son of Sewa Mahto and Jagdish Mahto son of Budhan Mahto

are given benefit of doubt and acquitted from the charges levelled against them.

12. The appellant Nos. 1 and 3, namely, Raju Mahto and Manger Mahto, who were granted bail by court's order dated 28.8.2002, their bail

bond is cancelled. The learned trial court is directed to issue warrant of arrest against them for serving out the sentence passed against both the

appellants, Raju Mahto and Manger Mahto.

13. As far as appellant Nos. 2 & 4, namely, Laldeo Mahto and Jagdish Mahto are concerned, they are on bail. They are released from the

bondage of their bail bond.

14. In the result, the appeal is allowed in part.