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Parsuram Mahto and Others Vs State of Bihar (Now Jharkhand)

Criminal Appeal No. 31 of 1993

Court: Jharkhand High Court

Date of Decision: Dec. 10, 2002

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 148, 149, 302

Citation: (2003) 1 JCR 272

Hon'ble Judges: Vinod Kumar Gupta, J; Lakshman Uraon, J

Bench: Division Bench

Advocate: B.P. Tetarbe, for the Appellant; T.N. Verma, for the Respondent

Final Decision: Dismissed

Judgement

Lakshman Uraon, J.
The appellants have preferred this appeal against the judgment and order dated 29.1.1993 and 13.2.1993

respectively passed by Shri S.K. Lal, 3rd Additional Judicial Commissioner, Ranchi in S.T. No. 694/1991 whereby and whereunder they have

been convicted under Sections 148 and 302/149, IPC, sentencing them to go R.I. for life for the offence punishable u/s 302/149, IPC and R.I. for

one year each for the offence punishable u/s 148, IPC, ordering that both the sentences in each count in respect of each convict will run

concurrently.

2. The prosecution case as per the fardbeyan, of PW 1, Tijan Devi, recorded in village Rohandih at 10 p.m. on 18.7.1990 by Manzur Ali, PW 6,

S.I. of Sikidripur P.S., is that on 18.7.1990 at about 7 p.m. husband of the informant-Jagmohan Mahto (since deceased) came to his house then

the-found that Dharmu Mahto (not appellant) was digging the earth in front.of his house. Her husband when objected then Dharmu Mahto abused

him in filthy language. Thereafter, Parsuram Mahto, armed with kudal, Bhikhari Mahto having kulhari in his hand and the others namely, Babu Ram

Mahto, Dharmu Mahto and Phulendra Mahto, each armed with lathi, rushed towards Jagmohan Mahto. When Parsuram Mahto ordered to kill

him then all the appellants and Dharmu Mahto jointly assaulted with kudal, kulhari and danda on the head of Jagmohan Mahto causing grievous

injuries on his person. The informant raised huila then the villagers, Fago Mahto, PW 4, Tirath Nath Mahto, PW 5, Salo Devi (not examined),

Fago Devi, PW 2 and others went there and saw the alleged occurrence. When the villagers assembled then the accused-persons fied away. The

alleged occurrence took place only due to land dispute in which the informant had got the decree in her favour. Due to that reason her husband

was done to death. The prosecution has examined altogether eight witnesses in this case out of them PW 1, Tijan Devi (informant), PW 2, Fago

Devi, PW 4, Fagu Mahto and PW 5, Tirath Nath Mahto, are the eye-witnesses of the alleged occurrence. PW 3, and PW 8, Laki Ram Mahto

and Suresh Mahto, are the seizure-list witnesses in respect of the seizure of blood-stained spade and blood-stained soil. PW 6, Manzar Ali, is the

I.O. of this case and PW 7, Dr. Ramsewak Sahu, conducted the post-mortem examination on the dead body of Jagmohan Mahto.

3. The learned counsel for the appellants has submitted that one defence witness, DW 1, Kailu Yadav, has been examined to deny the complicity

of these appellants in the alleged offence. It was submitted that although there are several families residing near the house of the informant but the

prosecution had not examined the independent witnesses. The P.O. has not been established by the prosecution witnesses as to whether it is in

front of the house of the informant or somewhere else. It was also submitted that Dharmu Mahto is alleged that he was digging the earth with

feudal. That kudal or khurpi has not been seized rather it has been alleged in the FIR that Dharmu Mahto also came armed with Lathi and

assaulted Jag Mohan. PW 6, Manzar All, I.O., of this case has mentioned that the P.O is the road of village Rehandih running from East to West

which is adjacent to the field of Jaleshwar Mahto in the South. In the East there is the house of Chandrasekhar Mahto and in the West there is one

small temple. His nearby neighbours have not been examined as witnesses. The I.O. has also mentioned that the filed belongs to the informant

which is at a distance of five hands from the P.O, where PW 1, the informant, has deposed that there is a kathal tree near the P.O. and on the

South there are flower trees, in the East there is barren land and in the North and South there are big trees. PW 4, Fagu Mahto has deposed that

the P.O. is at a distance of 15-20 hands from his house where there are 17-18 houses of the villagers. Those villagers were the independent

persons but they have not been mentioned as witnesses by the I.O. whereas only relatives of the informant have been chosen as prosecution

witnesses. It was also argued that PW 1, the informant, had gone to the P.S. and informed the Police that would have been the FIR whereas PW

6, I.O. has deposed that he came to know about this occurrence while he was on patrolling duty at village Kutte. He had not received any

information regarding the assailants and the deceased prior to the fardbeyan of PW 1, Tijan Devi, recorded by him! Seizure- list witnesses, PW 8,

Suresh Mahto, has denied that spade was seized in his presence in the house of Baburam Mahto. Seizure- list, Ext. 7, is not the original but the

carbon copy. It was also submitted that there is discrepancy and contradiction in the evidence of the witnesses regarding the manner of the alleged

occurrence PW 1, Tijan Devi, has stated that Rambabu Mahto first of all assaulted Jagmohan Mahto by means of lathi followed by tangiblow. The

other appellants, Parsuram Mahto, Dharmu Mahto and Phulendra Mahto thereafter assaulted with their respective weapons. PW 6, and PW 4,

Man-jur All and Fagu Mahto have stated that it was Parsuram Mahto who made first assault on the person of Jagmohan Mahto. The learned

Court below has relied the evidence of PWs 1, 2, 4 and 5, who have deposed inimically against the appellants.

4. The learned APP on behalf of the State has argued that as the accused Dharmu Mahto was juvenile, he was separately tried by the Juvenile

Justice Court. In that Court Tijan Devi (informant) and Tirathnath Mahto figured as PWs 1 and 2 respectively. They have given a different version

of the occurrence. Their depositions have been taken into consideration as additional evidence in this appeal and marked as Exts. A and A/1

respectively. The learned APP has submitted that the informant, PW 1, Tijan Devi, has fully supported the case of the prosecution. She has

deposed that the accused persons had threatened her and her witnesses. She was examined in the Juvenile Justice Court as witness No. 1 on

7.3.2002, Ext. A and Tirathnath Mahto was also examined on the same date in that Court as witness No. 2 whereas in Sessions Case No.

494/1991, Tijan Devi was examined as PW 1 on 11.6.1992 and Tirath Mahto was examined on 19.6.1992 as PW 5. It was argued that due to

threat given by the appellants on subsequent stage while deposing before the Juvenile Justice Court on 7.3.2000 they have been declared hostile

and have given a go-bye that they had seen any assailant assaulting Jagmohan Mahto resulting his death.

5. In this present case PW 1, Tijan Devi, PW 2, Fago Devi, PW 4, Fagu Mahto and PW 5, are the eye-witnesses of the alleged occurrence. PW

1, the informant, Tijan Devi, was sitting at her door at about 6 p.m. Her husband had just returned home after grazing the cattle and saw Dharmu

Mahto digging the earth in front of her house. When her husband, Jagmohan Mahto objected then he was abused in filthy language by Dharmu

Mahto. The house of the appellants is just nearby the house of the informant. The appellants, Parsuram Mahto armed with kudal, Bhikhari Mahto

armed with tangi, Baburam Mahto and Phulchand Mahto both armed with lathi went there and started assaulting her husband resulting his death at

the spot. She started weeping and crying. On her cry PW 4, Fagu Mahto, PW 5, Tirath Nath Mahto, PW 3, Laki Ram Mahto and her mother-in-

law, PW 2, Fago Devi, went there and saw the alleged occurrence. Her husband was taken at a distance of eight hands assaulting where he fell

down and died. She has also deposed that the alleged occurrence took place only due to land dispute which was decreed in her favour but it is still

pending in appeal. Baburam Mahto and Babulal Mahto is the same person. He has threatened the informant and the witnesses to kill if they

deposed against them. The accused who were in jail custody, also threatened by writing letters. She informed the Police where her statement was

recorded on which she gave her L.T.I. in presence of Fagu Mahto, PW 4. The house of the appellants is in front of the house of the informant at a

distance of ten hands. Her husband was firstly assaulted by Bhikari Mahto and Baburam Mahto then the other accused assaulted Jagmohan

Mahto. PW 2, Fago Devi, has also corroborated the evidence of PW 1, regarding the weapon held by the appellants and the assault made by

them on the person of the Jagmohan Mahto. She is a close neighbour of the informant. She also corroborates the fact that due to land dispute the

alleged occurrence took place. She had seen Dharmu Mahto digging the earth. That very land is also in dispute. She claims that the appellant,

Parsuram Mahto; is the first assailant followed by the assault of other appellants. PW 4, Fagu Mahto, saw the alleged occurrence from the

verandah of his house which is near the house of Tijan Devi. On hulla he went to the house of the informant, Tijan Devi and he saw all the

appellants assaulting Jagmohan Mahto. He has also supported the weapons which the accused had possessed and assaulted Jagmohan Mahto.

Bhikari Mahto had tangi, Parsuram Mahto had kudal and the others had lathi in their respective hands. They assault Jagmohan Mahto on his head.

When Jagmohan Mahto fell down then also he was assaulted on his mouth and chest as a result of which he died at the spot. The I.O. had gone to

the P.O. on the same night and prepared the inquest-report in carbon processes on which he signed, Ext. 1/2. As per his statement all the

appellants assaulted Jagmohan Mahto simultaneously. PW 5, Tirath Nath Mahto had also gone to the house of the informant on hearing hulla and

saw all these appellants jointly assaulting Jagmohan Mahto. He also corroborated that Parsuram Mahto had kudal, Bhikhari Mahto had tangi and

the others had Lathi in their respective hands. He has deposed that he had not seen the appellant, Phulendra Mahto at the P.O. When he reached

to the P.O. then the appellants were running away.

6. The genesis of the alleged occurrence as alleged in the fardbeyan, Ext. 2 by the informant is regarding the land dispute. PW 1, Tijan Devi, has

supported her fardbeyan and has stated that the land on which Dharmu Mahto was digging the earth was also in dispute. This fact has also been

corroborated by the witness, PW 2, Fago Devi, PW 4, Fagu Mahto and PW 5, Tirath Nath Mahto. The I.O.; PW 6, Manjur Ali, after recording

the fardbeyan of the informant, Ext. 2, re-examined the informant on the same day and inspected the P.O. The P.O. Is situated at the village

Rohandih road going from West to East. The road is just adjacent to the house of the informant in the South. The P.O. Is an open place. In the

South of the house of the informant there is land of Jaleshwar Mahto and on the North- West corner there is tiled house of Chandrasekhar Mahto.

On the adjacent South-West of the P.O there is a small temple. From that P.O place towards the North-East at a distance of 20 yards there is a

garden of the informant where the I.O found the soil dug. At the P.O he found the dead body of Jagmohan Mahto. He found blood in abundance

and seized the bloodstained soil and prepared seizure-list, Ext. 5. He also prepared the inquest-report in carbon processes, Ext. 6. Thus the P.O

as described by the eye- witnesses has been corroborated by the I.O.

7. PW 6, Manjur Ali, the I.O searched the house of the appellant Babu Ram Mahto (Babu Lal Mahto) and recovered one blood-stained kudal

and prepared seizure-list, Ext. 7. At that time he could not apprehend the accused who later on surrendered in the Court.

8. The learned counsel for the appellants has argued that there is discrepancy in giving details of the P.O. In view of the evidence of PWs 1, 2, 4

and 5 and objective findings of the I.O., PW 6, the submission of the learned counsel for the appellants bears no importance as the P.O has well

been established.

9. The time of the alleged occurrence is at about 7 p.m. on 18.7.1990 at village Rohandih. PW 1, Tijan Devi, the informant, was sitting at her door

taking her child on her lap. At that time her husband Jag-mohan Mahto had returned home after grazing cattle. He saw Dharmu Mahto digging the

earth in front of her door. The I.O has found the earth dug which is at a distance of 20 yards from the field of the informant in the North-East. He

objected Dharmu Mahto from digging the earth of the field which was also in dispute. Dharmu Mahto abused in filthy language and entered into

altercation proceeding 10 yards away from that place. The house of the appellants and the witnesses, Fagu Mahto, PW 4, Fago Devi, PW 2 and

the seizure list witnesses, PWs 3 and 8, are very near to each other within 10 yards. The house of the appellants and the informant is side by side.

All the appellants came out and started assaulting her husband, Jag-mohan Mahto simultaneously. PW 1, Tijan Devi, PW 2, Fago Devi and PW 5,

Tirath Nath Mahto, are the eye-witnesses who saw that the appellant, Parsuram Mahto, had feudal, the appellant, Bhikhari Mahto, had tangi and

the other appellants, Babu Ram Mahto and Phulendra Mahto, had lathi in their hands and they started assaulting Jagmohan. PW 1, Tijan Devi

started weeping and crying then the other witnesses PWs 2, 4 and 5 assembled there and saw the alleged occurrence. The witnesses who are the

eye-witnesses, have alleged that the appellants had assaulted with feudal, tangi and lathi on the head and back of Jagmohan who fell down and

died at the spot.

The accused-persons fled away throwing the lathi but took tangi and feudal. PW 2, Fago Devi, had also seen Dharmu Mahto digging the earth.

Thereafter, she also saw that all the accused went there and assaulted Jagmohan Mahto. She had deposed that Parsuram Mahto assaulted for the

i"irsi time with feudal on the head on Jagmohan Mahto thereafter he was assaulted with tangi by Bhikhari Mahto and with lathi by Babu Ram

Mahto and Phulendra Mahto. PW 3, Laki Ram Mahto, was present when the house of the appellant, Babu Ram (Babu Lal) Mahto, was

searched. From his house one blood-stained feudal was seized and seizure-list was prepared on which he and PW 8, Suresh Mahto signed Exts. 1

and 1/1. PW 8, Suresh Mahto, has deposed that in his presence blood-stained soil- was seized by the I.O where Jagmohan Mahto was murdered.

He is the witness of that seizure-list on which he signed, Ext. 1/4. He is also the witness of the seizure-list of blood stained feudal on which he

signed Ext. 1/1. Thus the material exhibits, seized at the P.O by the I.O., PW 6, in presence of the witnesses, PWs 3 and 8, go to prove the P.O

where Jagmohan was assaulted resulting his death at the spot. The appellants whose house is just nearby the P.O and the house of the informant,

fled taking tangi and feudal. All the appellants were residing in the same house. The blood-stained feudal recovered by the I.O from the house of

Babu Ram Mahto, shows that after fleeing away with blood-stained feudal, it was kept in the house and thereafter the appellants fled away. DW 1,

Kailu Yadav, has stated that when the police had gone to the village, the accused-persons were also present there. In their presence the informant

had not named anyone who caused the murder tof her husband. The villagers had also not informed him as to who murdered Jagmohan Mahto. On

the other hand, due to enmity she named the appellants before the I.O. The I.O has been examined and cross-examined at length. The I.O has

deposed that he did not find the accused in the night of the alleged occurrence when he had gone to the P.O village. Thus the statement of the

witness, DW 1, Kailu Yadav, is not trustworthy. He is not the authority to whom the alleged occurrence would have been reported. PW 1, Tijan

Devi, has deposed that the accused persons were threatening her and her witnesses in deposing in the Court against the appellants. She and PW 5,

Tirath Nath Mahto, have fully supported the prosecution case. Although in the Juvenile Justice Court they have not stated any thing about the

alleged occurrence, Exts. A and A/1 respectively. They were examined in this case on 11.6.1992 and 19.6.1992 respectively whereas before the

Juvenile Justice Court they were examined on 7.3.2000 as witness Nos. 1 and 2 in G.R. Case No. 2391/90. During his cross-examination, the I.O

was riot drawn his attention to this fact by the defence whereas the I.O. PW 6, has stated that he recorded the statement of the informant, PW 1,

which is the fardbeyan, Ext. 2 and also re-examined her along with Tirath Nath Mahto, PW 5, who has supported the prosecution case. Thus

Exts. A and A/1, deposed in the Court of Juvenile Justice in respect of trial of juvenile offender, Dharmu Mahto, does not carry any importance as

these witnesses in the Sessions Case No. 694/1991 have fully supported the prosecution case before the Court as they had also deposed u/s 161,

Cr PC before the I.O in course of investigation.

10. Dr. Ramsewak Sahu, PW 7, conducted the post-mortem examination on the dead-body of Jagmohan Mahto on 19.7.1990 under the

guidance of Dr. Renu Bala and found :

ABRASIONS

1. 3 x 2 cm., right infra scapular region

LACERATED WOUNDS

1. 6 x 1.5 cm. x scalp deep on the frontal region of head situated auteroposteriorly

2. 3 x 1.5 cm x scalp deep on right parietal region of head.

3. 4 x 2 cm x bone deep on right parietal region of head posterior part

4. 3 x 1.5 cm x bone deep on right parietal region

INCISED WOUNDS

1. Linear 4 cm along on left arm lateral side upper part

2. 6 x 2 cm x scalp deep on left parietal region.

3. 2 x 1 cm x soft tissues on right upper lip

INTERNAL

There is diffused contusion of both parietal and right temporal scalp. There is depressed and communicated fracture of parietal bone measuring 10

x 9 cm and crack fracture of left frontal and rest of right parietal bone. There is laceration of brain underneath presence of blood and blood clot

over both sides of brain.

The Doctor opined that all the injuries were ante-mortem in nature caused by sharp cutting weapon such as tangi, farsa and kulhari and rest injuries

were caused by hard and blunt substance such as lathi and also by blunt portion of tangi, farsa and kudal. The death was due to head injury which

was alone sufficient to cause the death in normal circumstances. The time elapsed since death was 6-24 hours from the time of post-mortem

examination report. He prepared the postmortem examination report in his pen and signature. Ext. 8. The abrasions injuries found on the dead-

body was not sufficient to cause the death. The lacerated wounds were on the head. One incised wound, injury No. 2, was also on the left parietal

region. The abrasion, injury No. 1, was also on the infra scapular region which is the medical evidence also, corroborates the ocular evidence

regarding the weapons used by the appellants which were kudal, tangi and lathi.

11. In view of my above considered facts I come to the conclusion that due to land dispute, the appellant, Parsuram Mahto armed with kudal,

Bhikhari Mahto having tangi and rest of two appellants armed with lathi had gone to the P.O where Jagmohan Mahto had entered into an

altercation with Dharmu Mahto regarding digging of earth by him. As the house of the appellants is very nearby from the house of the informant and

the P.O they went to the P.O armed with kudal, tangi and lathi. Due to previous enmity regarding the land dispute, all of them with an intention to

cause the murder of Jagmohan Mahto, assaulted him with their respective weapons simultaneously. Parsuram Mahto gave kulhari blow on the head

of Jagmohan Mahto, Bhikhari Mahto gave tangi blow on his head and the others assaulted with lathi on his person causing injuries on his person as

mentioned by the Doctor, PW 7, in his postmortem examination report, Ext. 8, As it was 7 p.m. In the month of July, it was not so dark and all the

assailants are nearby persons, hence, they were identified by the witnesses, PWs 1, 2, 4 and 5. Their ocular evidence was corroborated by the

I.O., PW 6 and also by the Doctor, PW 7 which goes to prove that these appellants are responsible to cause the murder of Jagmohan Mahto in

furtherance of their common intention only due to the land dispute.

12. In the result I find that it is a well proved case. I do not find any infirmity in the findings regarding the conviction and sentence passed by the

learned Court below. On the other hand, I do not find any merit in this appeal which is, accordingly, dismissed. The order of conviction and

sentence passed by the learned Court below is hereby confirmed. As all the appellants are on bail hence their bail-bonds are cancelled and they

are directed to surrender before the learned Court below to serve their sentences. The learned Court below is also directed to take effective steps

for apprehension of these convicts- appellants to serve their sentences.

Vishnudeo Narayan, J.

I agree.