

(2010) 03 JH CK 0031**Jharkhand High Court****Case No:** None

Baghambar Mahto and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: March 11, 2010**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 188, 307

Citation: (2010) CriLJ 4312**Hon'ble Judges:** Pradeep Kumar, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

Pradeep Kumar, J.

Heard the learned Counsel for the appellants and learned Counsel for the state.

2. The instant appeal is directed against the judgment of conviction and order of sentence dated 21.5.2002 passed by Sri Gautam Mahapatra, Additional Sessions Judge, Fast Track Court No. 4, Bokaro in S.T. No. 184 of 1990 by which judgment all the appellants have been found guilty for the offence u/s 307/34 of the I.P.C and they were convicted and sentenced to undergo R.I. for 3 years.

3. It is submitted by learned Counsel for the appellants that although, the prosecution has examined 16 witnesses, but they have failed to prove any injury or injury report as no doctor was examined by the prosecution and in absence of doctor it is difficult to say that any injury was caused to the informant and witnesses, which were dangerous to their lives. He has further submitted that it was a fight due to land dispute, since the prosecution has alleged that the accused persons were trying to break the wall between the two houses. It is a matter of case and counter case. The accused persons have also filed a case with regard to the same allegation on the prosecution witnesses who are accused in the counter case in S.T. No. 185 of 1990. The defence has proved the charge sheet as Ext.A and proved the F.I.R of that

case marked as Ext.B. Both the parties are in enmical terms due to land dispute. But in absence of any medical evidence and admitted case of land dispute, learned trial court has committed an error of law and wrongly found the appellants guilty u/s 307/34 of the I.P.C. Accordingly, the impugned judgment is fit to be set aside.

4. On the other hand, learned Counsel for the state has opposed the prayer and submitted that although the prosecution has not examined any doctor and proved the injury report, but the prosecution witnesses specifically stated about the injury caused to P.W.3, 6 and 7, who have shown their injury to the court and the court finding the injury rightly convicted the appellants and the impugned judgment requires no interference by this Court.

5. After hearing both the parties and after going through the evidences on record, I find that the prosecution case was started on the basis of the fardbeyan given by the informant, Sashi Bhushan Mahto dated 27.3.1990 at 7.30 hrs. before the Pindrajora P.S stating therein that today in the morning at 6 A.M. when they got up in the morning then their neighbour Bhagambar Mahto, Abharan Mahto, Dashrath Mahto, Niwaran Mahto, Shanti Mahto,, Mangro Mahto. Charku Mahto, all of village Pokhkhana , Pindrajora P.S were breaking the wall of the informant which was 60 feet long and 5 feet height. When they objected then they assaulted Ritbaran Mahto, Tarini Mahto, Gulabi Mahatain, Hemant Mahto, Bibhuti Mahto with Tabla and Tangi. He has stated that Hemant Mahto was assaulted with Tangi by Niwaran Mahto, Gulabi Mahtain was assaulted with Tangi by Bhagambar Mahto and Tarani was assaulted with Tangi by Abrahan Mahto. They started bleeding. Mangro and Charku were saying to kill them. They came in injured condition to the police station and gave their fardbeyan.

6. On the basis of the said fardbeyan, police registered a case u/s 147, 148, 149, 188, 323, 324 of the I.P.C against the accused and after investigation submitted charge sheet u/s 326, 307/34 I.P.C. Since, the case was exclusively triable by the court of Sessions, Learned C.J.M committed the case to the court of Sessions Judge and finally the case was tried by Additional Sessions Judge, FTC-4, who found the appellants guilty and contacted and sentenced them as aforesaid.

7. It appears that the prosecution has examined 16 witnesses to prove its case.

P.W.1 is Khandu Mahto.

P.W.2 is Karam Mahto.

P.W.3 is Hemant Kr. Mahto.

P.W.4 is Ganga Sagar Thakur.

P.W.5 is Surendra Mahto.

P.W.6 is Smt. Gulabi Devi Mahtain.

P.W.7 is Tarani Mahto.

P.W.8 is Phudni Mahtain.

P.W.9 is Chinibas Mahto.

P.W.10 is Khepa Mahto.

P.W.11 is Madhusudan Mahto.

P.W.12 is Ajit Mahto.

P.W.13 is Manjura Devi.

P.W.14 is Kanilal Mahto.

P.W.15 is Roshan Mahto.

P.W. 16 is Bhushan Mahto.

8. All the 16 witnesses have stated that they were assaulted by the accused-appellants, but they have specifically stated that appellant Niwaran assaulted Hemant, Bhagambar assaulted Gulabi and Abharan assaulted Tarani. Although, the trial court has found them guilty u/s 307/34 of the I.P.C, but there is no medical evidence, no injury report has been proved nor the doctor has been examined. It is important to note that even the informant, Sashi Bhushan Mahto, who died during trial was not examined in this case. The Investigating Officer was also not examined in this case. In that view of the matter, in absence of medical report and in absence of any finding that the injury caused were on vital parts of the body and even considering the allegation that there are case and counter case due to long standing land dispute between the parties, in my opinion the conviction of the appellants u/s 307/34 of the I.P.C is not maintainable.

9. In the facts and circumstances of the case, since the trial court has seen the injury of P.W.3 Hemant Kr Mahto caused by Niwaran Mahto, P.W.6 Gulabi Mahatain assaulted by Bhagambar Mahto and P.W.7, Tarani Mahto assaulted by Abharan Mahto and the said injuries were admittedly simple in nature, therefore, appellants namely Abharan Mahto Bhagambar Mahto, Niwaran Mahto are found guilty for the offence u/s 324 of the I.P.C and they are sentenced to only pay a fine of 5000/- (Five Thousand) each, since they have already undergone long drawn trial of the case which was instituted on 27.3.1990. Further, out of the fine amount, Rs. 4000/- (Four Thousand) each must be paid to the injured Hemant Kr. Mahto, Tarini Mahto and Gulabi Mahatain and in default of payment of fine , all the three appellants will further undergo S.I. for 1 year each with the aforesaid amendment in the conviction and sentence, all the other appellants namely Shanti Mahto, Choto Babu Mahto, Charku Mahto, Mangro Mahto, Dashrath Mahto, Laldeo Mahto are given benefit of doubt and acquitted from the charges.

11. In the result, appeal is allowed in part. Since, the appellants are on bail, they are released from the liability of their bail bond. However, the trial court will issue warrant of arrest against appellants, Abharan Mahto, Baghambar Mahto and Niwaran Mahto for serving out the sentence and their bail bond are cancelled.