

(2003) 02 JH CK 0028

Jharkhand High Court

Case No: Criminal Appeal No. 395 of 1997

Chandra Mohan Mandal and
Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Feb. 21, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 300

Citation: (2003) CriLJ 3095 : (2003) 2 JLJR 321

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

Bench: Division Bench

Advocate: R. Sharma, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

Lakshman Uraon, J.

Being aggrieved by the judgment and order of conviction and sentence dated 20-8-1997 and 23-8-1997 respectively, passed by Shri Swaroop Lal, the learned 1st Addl. District and Sessions Judge, Godda in Sessions Case No. 22/95/26/1995, whereby and where-under, he convicted the appellant No. 1, Chandra Mohan Mandal, u/s 302, IPC and the appellants Nos. 2 and 3, Hari Mohan Mandal, and Bijay Mandal u/s 307, IPC and sentenced the appellant No. 1, Chandra Mohan Mandal, to go imprisonment for life for the offence punishable u/s 302, IPC and the appellant No. 2, Hari Mohan Mandal and the appellant No. 3, Bijay Mandal, were sentenced to go R.I for life for the offence punishable u/s 307, IPC. The other two accused, Gajadhar Mandal and Rameshwar Mahto, who were charged under Sections 109, 302, 307 and 120B, IPC, were acquitted.

2. The prosecution case as per the fard beyan, Ext. 4, of the informant, Guddu Kumar Mandal, P. W. 5, recorded by the S.I. R.K. Bharamachari, P.W. 11, Officer-in-charge, Godda P.S., on 12-2-1994 at 9.20 at the P.O. village Punasia, P.S.

Godda Town, is that at about 6.30 a.m. on that date, the informant along with his uncles, Narayan, Mandal (deceased) and Janardhan Mandal (injured), P.W. 1, had gone for husking the paddy in the pounding Mill of Sikandar Mahto, situated at Godda Pirpaiti Pitch Road. After their arrival, the villagers, Chandra Mohan Mandal, Hari Mohan Mandal and Bijay Mandal (all the appellants) also went there. They had kept their paddy bags at the Mill on the previous day. Both the parties entered into an altercation regarding the husking of their paddy first. The appellant, Hari Mohan Mandal forcibly put his paddy into the hauler. When Narayan Mandal objected, then all the appellants abused him and the appellant, Chandra Mohan Mandal brought out a knife from his waist and gave 3-4 knife blows on his abdomen. On being injured Narayan Mandal fell down. When Janardhan Mandal went to rescue him, then the appellant, Hari Mohan Mandal, took the knife from the appellant, Chandra Mohan Mandal and stabbed on his head and eye. He also fell down on being injured. The appellant, Bijay Mandal, assaulted by throwing bricks near the eye of Janardhan Mandal. The bricks thrown at the informant by Bijay Mandal could not injure him. Thereafter, all the appellants fled away. Narayan Mandal died at the spot. The injured, Janardhan Mandal, was sent to Sadar Hospital for treatment on a rickshaw. Rameshwar Mahto, father of the Mill owner, Sikandar Mahto and Joginder Mahto, P.W. 9, saw the alleged occurrence. On alarm, the villagers assembled there. The informant put the dead body of Narayan Mandal on a Thela with the help of others. The alleged occurrence took place only due to old enmity in between them. On the fard beyan the informant, P.W. 1, Gaddu Kumar Mandal and the witness, Rameshwar Mahto, signed, Exts. 1 and 1/1 respectively. After investigation charge sheet under Sections 302, 307/34, IPC was submitted on 10-5-1994. Supplementary charge-sheet under Sections 302, 307, 109/34, IPC was submitted against the acquitted accused, Gajadhar Mandal and Rameshwar Mahto.

3. The prosecution has examined 13 witness in order to bring home the charges levelled against these appellants. P.W. 1, Janardhan Mandal and P.W. 5, Guddu Kumar Mandal, the informant, had gone for husking their paddy in the paddy pounding Mill of Sikandar Mahto who are the eye-witnesses of the alleged occurrence, P.W. 2, Prakash Mandal, P.W. 3, Kishori Mandal and P.W. 4 Mosmat Rita, are the hearsay witnesses regarding the alleged assault who saw the appellant fleeing away from the P.O. P.W. 6, Kulanand Choudhary, M.O. of Sadar Hospital Godda, examined the injured, Janardhan Mandal and P.W. 7, Dr. Ajit Kumar, conducted the postmortem examination on the dead body of Narayan Mandal. P.W. 8, Md. Imamam went to the P.O. after the alleged occurrence and saw the dead body of Narayan Mandal where he saw Rameshwar Mahto (acquitted accused) standing there. As he did not support the prosecution case he was declared hostile by the prosecution. P.W. 9, Yogendra Mahto, son of Rameshwar Mahto, has deposed that both the parties left the paddy pounding Mill after husking their paddy. He does not know when the alleged occurrence took place as they had gone outside the Mill. This witness was also declared hostile by the prosecution. P.W. 10, Chandra Bhusan

Singh, is the Officer-in-Charge of Godda Town P. S. who on information entered S.D. Entry No. 226 dated 12-2-1994 and went to the P. O. along with P.W. 11, R.K. Bharamachari and recorded the fard beyan of the informant, Guddu Kumar Mandal. On the basis of that fard beyan the formal FIR, Ext. 5 was drawn. P.W. 11, R.K. Bharamachari, in course of investigation prepared inquest report, Ext. 9, P.W. 12, A.S.I. Janardhan Singh, has proved the entry in Thana Malkhana Register No. 3/94 dated 12-2-1994 in the pen and signature of R. K. Brahmachari bearing Sl. No. 298, P.W. 13, Nasiruddin Khan, S. I, a formal witness, has proved the diary, Ext. 8 and inquest report, Ext.9.

4. On the basis of the evidence available on the record, the learned Court below relied on the evidence of the injured, P.W. 1, Janardhan Mandal and the informant, P.W. 5, Guddu Kumar Mandal, supported by the medical witness, P.W. 6, Kulanand Choudhary and the evidence of the I.O. P.W. 11, R.K. Bhramachari, convicted these appellants and sentenced them.

5. The learned counsel for the appellants has submitted that the fard beyan of the informant is not the FIR, rather the Police was informed at the Police Station itself, where the fard beyan was recorded at the P.O. The prosecution has not established the P.O. where the alleged assault on the deceased was made. The genesis of the alleged occurrence is also falsified by the evidence of P.W. 9, who deposed that both the parties had left his Mill after husking their paddy and no occurrence took place inside the paddy pounding Mill. The I.O. in course of investigation found the appellant, Chandra Mohan Mandal, admitted in the hospital who was arrested there after preparing injury report. The prosecution has not explained as to how the appellant No. 1, Chandra Mohan Mandal, received injury P.W. 2, Prakash Mandal, went to the P.O. after the alleged occurrence who claimed himself to have been seen the appellants fleeing away. P.W. 3, Kishori Mandal and PW 4, Mosmat Rita, are not the eye-witnesses and are only chance witnesses who claimed to have seen the appellants fleeing away from the P.O. Lastly it was submitted the evidence of eye witnesses, P.W. 1, Janardhan Mandal and P.W. 5, Guddu Kumar Mandal, are full of contradictions which can not be relied upon in convicting these appellants.

6. The learned APP has submitted that admittedly there was a long standing enmity in between the parties. The alleged occurrence took place for husking paddy in the paddy pounding Mill first. The injured, P.W. 1, Janardhan Mandal, and the informant, P.W. 5, Guddu Kumar Mandal, were present there and have corroborated the prosecution case. P.W. 2, Prakash Mandal, P.W. 3, Kishori Mandal and P.W. 4, Mosmat Rita, saw these appellants fleeing away from the P.O. The Police Officials found the dead body outside the door of the Mill but inside the boundary wall of the Mill, hence the P.O. has been established. It can very well be said that the alleged occurrence occurred in the paddy pounding Mill of Sikandar Mahto. The inquest report, Ext. 9, shows that it was prepared at the P.O. in presence of the witnesses and blood-stained soil was seized from the P.O. (Material Ext. 1 and Material Ext. II).

The evidence of these witnesses were considered by the learned 1st Addl. Sessions Judge, Godda and his rightly convicted and sentenced these appellants.

7. In this present case, the eye-witnesses, who were present at the P.O. are, P.W. 1, Janardhan Mandal, who was also injured, and P.W. 5 Guddu Kumar Mandal. Hence, the evidence of these eye-witnesses are to be considered carefully because there is a long standing enmity in between them and the appellants. The deceased, Narayan Mandal and P.W. 1, Janardhan Mandal, are the uncles of P.W. 5, the informant, Guddu Kumar Mandal, who were by the side of Narayan Mandal inside the paddy pounding Mill at the time of the alleged occurrence. He has deposed that when the appellants went there after arrival of his uncle and put their paddy into the hauler then, Narayan Mandal objected. All the three appellants abused him. When Narayan Mandal objected in abusing him then, Chandra Mohan Mandal brought out a Chhura from his waist and stabbed Narayan Mandal on his abdomen twice and once on his forehead. At that time other two appellants, Hari Mohan Mandal and Bijay Mandal caught hold of Narayan Mandal. When Narayan Mandal fell down on being injured, P.W. 1, Janardhan Mandal, went to rescue him then, Hari Mohan Mandal took out the knife from the appellant, Chandra Mohan Mandal and gave two Chhura blows on his eye. He also sustained bleeding injury and fell down. The alleged occurrence was witnesses by P.W. 2. Prakash Mandal P.W. 8, Md. Imaman and also other villagers. P.W. 2, Prakash Mandal, P.W. 3, Kishori Mandal, P.W. 4, Mosmat Rita and P.W. 8, Md. Imaman, are not the eye-witnesses of the alleged occurrence. As per their deposition they had gone to the P.O. after the alleged occurrence and saw the appellants fleeing away. The dead body of Narayan Mandal was put on a Thela which was outside the door of the Mill. The injured, Janardhan Mandal, was sent on a Rikshaw to Sadar Hospital for treatment. P.W. 1 and P.W. 5 had not husked their paddy. The appellants put their paddy into the hauler. P.W. 9, Yogendra Mahto, son of the owner of the paddy pounding Mill, Rameshwar Mahto, has not supported the evidence of P.W. 1 and P.W. 5 that they had not yet husked their paddy. On the other hand, P.W. 9 deposed that both the parties had husked their paddy and had left the Mill. This witness was declared hostile by the prosecution as he had supported the genesis of the alleged occurrence before the I.O. and had receded from his earlier statement recorded in course of investigation by the I.O. P.W. 10, Chandrabhushan Singh. Hence this witness is not a reliable witness who has receded from his earlier statement recorded in course of investigation. The I.O. P.W. 11, Officer-in-Charge of Godda P.S. R.K. Bharmachari, went to the P.O. after entering S.D.E. No. 226 dated 12-2-1994 and found the dead body of Narayan Mandal. He recorded the fard beyan of the informant, Guddu Kumar Mandal, P.W. 5, there and prepared inquest report. He seized the blood-stained soil and prepared seizure-list, Ext. 6, and sent it to Goddu Town P.S. Malkhana (Material Ext. I and Material Ext. II) which was entered at serial No. 3/1994 in the Malkhana register. The inquest report shows that the dead body was put on Thela infront of the Mill. The I.O. had not entered inside the Mill hence he did not inspect as to whether there was sack of

paddy or rice or cycle inside the Mill. When he came to know that the appellant, Chandra Mohan Mandal, is admitted in Hospital then he went there and arrested him. The informant, P.W. 5 and the injured. P.W. 1, deposed that actually Chandra Mohan was not injured in the alleged occurrence rather he went to his home and managed the injury and got him admitted in the hospital. How the injury was sustained by Chandra Mohan Mandal could not be brought on the record by the defence whereas the injury sustained by him was denied by the eye-witnesses, P.W. 1 and P.W. 5. P.W. 10, I.O., found the P.O. to be the paddy pounding Mill of Rameshwar Mahto. P.W. 9, Yogendra Mahto, is the son of Rameshwar Mahto. He found that the main door of the Mill was facing towards West and open. He found blood-stained soil outside the Northern door of the Mill at a distance of 4 which he seized. Outside the door of the Mill but inside the boundary wall of the Mill the alleged occurrence took place. The I.O. did not mentioned in the C.D. that the rice was kept in the sack and stitched by the informant, P.W. 5 and it was put on the cycle by his uncle.

8. P.W. 6, Dr. Kulanand Choudhary, on 12-2-1994 at about 8.50 a.m. examined P.W. 1, Janardhan Mandal and found (1) One incised wound over left supraorbital area, obliquely placed, oozing 8 cm. x 2 c.m. x 2.5 cm. (2) One incised wound over the left malar area of the face 6 cm. x 2 cm. x 2.5 cm. oozing (a part of the underlying bone cutaway) (3) one abrasion over the left patellar area 6 cm. x 4.5 cm. both on left (4) one bruise over both eyelids on left side 4. 5 cm x 3 cm. upper; 4.5 cm. x 2 cm. lower (5) Tenderness at multiple sites (6) The whole left eyeball reddened due to extreme conjunctival haemorrhage. All the injuries were caused within three hours approximately. He found that the injury No. 1 was grievous and the other injuries were simple in nature. Injury Nos. 1 and 2 were caused by sharp substance and others by hard and blunt substance. The injury report is Ext. 2. The report of this witness, P.W. 6, corroborates the evidence of P.W. 1 and P.W. 5 that the appellant, Hari Mohan Mandal took out the knife from the appellant, Chandra Mohan and gave knife blows on the head and eye of Janardhan Mandal, P.W. 7, Dr. Ajit Kumar conducted postmortem examination on the dead body of Narayan Mandal on 12-2-1994 at 3 pm. and found the following antemortem injuries; (1) one sharp cut injury vertical size 1" x 1/2" x 6" above the umbilicus in the midline (2" above the umbilicus). On probing, the direction of wound was obliquely and backwards. A loop of intestine 6" protruded through the wound. (2) One sharp cut injury horizontal, size 1" x 1/2" x 4" just right lateral to the umbilicus. On probing, the direction of wound was obliquely and backwards. A loop of intestine 4" in length protruded through the wound. On dissection he found partially digested food material in the stomach. Small intestine was sharp cut at six places size varying from 1/2" to 1" x 1/2" x 1/4" which were antemortem injuries. Mesentery and mesenteric vessels showed sharp cut 1" x 1/2" x 1/2" antemortem in nature. Abdominal aorta showed sharp cut injury 1/2" x 1/2" x 1/4" antemortem in nature. The cause of death was due to shock and haemorrhage as a result sharp cutting weapon due to above injuries which were

sufficient to cause death in normal course of life. The time of death since postmortem examination was within 12 hours. He prepared postmortem examination report, Ext. 3, in his pen and signature. The evidence of this medical evidence corroborates the ocular evidence of P.W. 1 and P.W. 5 regarding stab injury given to the deceased, Narayan Mandal twice on his abdomen.

9. The genesis of the alleged occurrence as per the fard beyan, Ext. 4, is that the deceased, Narayan Mandal, had gone there along with the informant, Guddu Kumar Mandal and Janardhan Mandal, for husking their paddy in the paddy pounding Mill of Rameshwar Mandal. All the appellants went there subsequent to their arrival in the morning at 6 a.m. There was altercation regarding husking of paddy, first. Narayan Mandal (deceased), his brother, Janardhan Mandal and nephew, Guddu Kumar Mandal, were just opening the sack of paddy. In the mean time the appellant, Chandra Mohan Mandal, put his paddy into the hauler for husking. At that time the alleged occurrence took place. The I.O. did not inspect the Mill by entering into the room hence he has not mentioned as to whether there was paddy or rice or cycle of the deceased. On the other hand, P.W. 5, Guddu Kumar Mandal, the informant, has corroborated his statement as recorded in the fard beyan that as they were likely to open the (sic) the appellants put their paddy in the hauler for husking although they had arrived there after 20 minutes of the arrival of the informant. P.W. 1, Janardhan Mandal, who is the injured, has stated that where the paddy was being husked had husked rice was falling, the alleged occurrence took place. As per his statement the appellants were husking their paddy and husked rice was coming out of the paddy pounding Mill P.W. 9, Yogendra Mahto, owner of the paddy pounding Mill, deposed that both the parties had gone to his Mill at 6 am. I find that the alleged occurrence took place regarding husking of paddy first as P.W. 5, Guddu Kumar Mandal, has deposed in his fard beyan and also in Court that they were opening the sack of paddy for husking. Although the appellants were after 20 minutes and the appellant. Chandra Mohan, put his paddy in the hauler from plastic sack. This statement of the informant, as deposed in the Court and also stated in the fard beyan, is minor contradiction which does not disprove the genesis of the alleged occurrence which was regarding husking of paddy first.

10. The alleged occurrence took place inside the Mill as deposed by the informant, P.W. 5, Guddu Kumar Mandal, in his fard beyan and also in course of evidence in the Court that when by force the appellant, Chandra Mohan Mandal put his paddy into the hauler and the paddy was being husked and the rice was coming out from the paddy pounding Mill, at that very place the alleged occurrence took place. The informant, P.W. 5, stated that the length of Mill is 20-25 hands North to South and 10 hands in width from East to West. P.W. 10, I.O., found two doors of the paddy pounding Mill. There is boundary wall of bricks towards, North and West. He found blood-stained soil outside the Northern door at a distance of 4". He seized the blood-stained soil. Thus the place of occurrence as per the evidence of the I.O. is 4" from the Northern, main door of the Mill which is inside the boundary wall of the

Mill where the blood-stained soil was found. There was an altercation regarding husking first and scuffle took place. P.W. 1, Janardhan Mandal and the informant, P.W. 5, Guddu Kumar Mandal have deposed that during scuffle the appellants, Hari Mohan Mandal and Bijay Mandal had caught hold of Narayan Mandal. At that moment Chandra Mohan Mandal stabbed three-four knife blows on the abdomen of Narayan Mandal. On being injured, he fell down and was tossing and tumbling about. The injured, P.W. 1, Janardhan Mandal and the informant, P.W. 5, Guddu kumar Mandal, deposed that the alleged assault took place where the rice was coming out from the Mill and falling on the ground. This shows that there was scuffle in between the assailants and the deceased, Narayan Mandal, at the paddy pounding Mill.

11. The informant, Guddu Kumar Mandal, in his fard beyan, has alleged that P.W. 1, Janardhan Mandal, went to rescue then the appellant, Hari Mohan Mandal took the knife from the appellant, Chandra Mohan Mandal and assaulted on his head and eye. When he fell down then the appellant, Bijay Mandal, assaulted with a brick near his eye. Thus, as per the evidence of the informant, P.W. 5, P.W. 1, Janardhan Mandal, sustained three injuries on his person, one on his head and two on his eye. P.W. 1 Janardhan Mandal (injured), has deposed that Hari Mohan Mandal took Chhura from Chandra Mohan Mandal and gave two Chhura blows above the left eye. P.W. 6, Dr. Kulanand Choudhary, who examined the injured, Janardhan Mandal, P.W. 1, on 12-2-1994 found two incised wounds, one abrasion, one bruise over both the eyes. He opined that injury Nos. 1 and 2 were caused by sharp substance and the others by hard and blunt substance. P.W. 9, Yogendra Mandal, has not supported his earlier statement made before the I.O. u/s 161, Cr. P.C. regarding the assault given by these appellant to the deceased and the injured, P.W. 1, Janardhan Mandal and he was declared hostile. The ocular evidence of P.W. 1, Janardhan Mandal and P.W. 5, Guddu Kumar Mandal, were corroborated by the medical witness, P.W. 6, Kulanand Choudhary, who found stab wounds over left supraorbital area and over the left molar area of the face. The injury No. 1 was grievous and the others were simple in nature caused by sharp substance. P.W. 7, Dr. Ajit Kumar, who conducted the postmortem examination on the dead body of Narayan Mandal, found sharp cut injuries on the abdomen which were 6" and 4" respectively in depth which corroborate that those injuries were caused by knife blows on the vital part of naval area resulting his death. On the other hand, the allegation against the appellant, Bijay Mandal, is simple that he hurled bricks at P.W. 1, Janardhan Mandal but P.W. 1, Janardhan Mandal, as well as P.W. 5, the informant do not support the assault on P.W. 1, Janardhan Mandal by bricks bats. Therefore, there is no legal evidence on the record to substantiate the charge u/s 307, IPC against the appellant Bijay Mandal.

12. In view of my above considered facts and evidence, I come to the conclusion that the prosecution has proved the genesis of the alleged occurrence which was regarding husking of paddy first. As there was long standing enmity in between the

parties, hence this genesis regarding husking of paddy first among them, was the result of scuffle. In course of scuffle, the appellants, Hari Mohan Mandal and Bijay Mandal caught hold of Narayan Mandal. When P.W. 1, Janardhan Mandal, went for rescue of his brother, Narayan Mandal, then the appellant, Hari Mohan Mandal, took out the knife from Chandra Mohan Mandal and stabbed, P.W. 1, Janardhan Mandal, on his head and eye, causing grievous injuries. The appellant, Chandra Mohan Mandal, stabbed two knife blows on the abdomen of the deceased, Narayan Mandal. The P.O. is the Mill of P.W. 9, Yogendra Mahto. The I. O. found the blood-stained soil 4" North of the door of the Mill but inside the boundary of the Mill. In general terms it is the Mill of Yogendra Mahto where the alleged occurrence took place. The I.O. did not find any paddy or rice or cycle at the P. O. as he did not enter inside the room. Thus, due to faulty manner of investigation, the prosecution case has not suffered in establishing the P.O. of the alleged occurrence. The manner of the alleged occurrence has also been corroborated as to how the appellant, Chandra Mohan Mandal, stabbed Narayan Mandal with knife and the appellant, Hari Mohan Mandal, stabbed Janardhan Mandal by knife. After the occurrence, the appellants were seen fleeing away from the P.O. by P.W. 2, Prakash Mandal, P.W. 3, Kishori Mandal and P.W. 4, Mosmat Rita, widow of the deceased which corroborates that these appellants were the assailants of the deceased and the injured at the P.O. due to long standing enmity and the genesis of the occurrence was regarding husking of paddy first.

13. Thus, I do not find any infirmity in the findings of the learned Court below in convicting and sentencing the appellant, Chandra Mohan Mandal, u/s 302, IPC and sentencing him to go imprisonment for life. I also do not find any infirmity in convicting and sentencing the appellant, Hari Mohan Mandal u/s 307, IPC, and sentencing them to undergo R.I. for life.

14. In the result, I do not find any merit in this criminal appeal which fails and the appeal is, hereby, dismissed. The conviction and sentence passed by the learned Court below against the appellants, Chandra Mohan Mandal and Hari Mohan Mandal in Sessions Case No. 22/95/26/95 is, accordingly, affirmed. As the appellant No. 2, Hari Mohan Mandal is on bail, his bail bond is cancelled and he is directed to surrender in the learned Court below to serve their sentences. The learned Court below is also directed to take all coercive steps for apprehension of the appellant, Hari Mohan Mandal, to serve his sentence.

However, in the absence of any legal evidence on the record, substantiating the charge u/s 307 I.P.C. against the appellant, Bijay Mandal, he is not found guilty and as such he is acquitted and discharged from the liability of his bail-bond.

Vishnudeo Narayan, J.

15. I agree.