

Kanchan Mahato Vs The State of Bihar (Now Jharkhand) and Ramu Mahto

Court: Jharkhand High Court

Date of Decision: Feb. 9, 2010

Acts Referred: Arms Act, 1959 " Section 27
Penal Code, 1860 (IPC) " Section 307, 326, 34, 448

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Pradeep Kumar, J.

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

2. The instant appeal is directed against the judgment of conviction dated 28.03.2000 and order of sentence dated 31.03.2000 respectively

passed in S.T. No. 230 of 1992 by Prabodh Ranjan Das, 3rd, Additional Sessions Judge, Deoghar, by which judgment he found the appellant

guilty u/s 326 of the I.P.C. and sentenced him to undergo R.I. for seven years and also a fine of Rs. 1000/-, in default of making payment of fine,

he shall suffer two month simple imprisonment, he also found guilty u/s 448 of the I.P.C. and sentenced him to undergo R.I. for one year and

further found guilty u/s 27 of the Arms Act and sentenced him to undergo R.I. for five years and also a fine of Rs. 1000/-, in default of making

payment of fine, he shall suffer for two months, all the sentences have been directed to run concurrently.

3. It is submitted by learned Counsel for the appellant that only the injured P.W.9, Geeta Devi and the informant P.W.6 Ramu Mahto supported

the prosecution case. The firing was done by this accused causing injury on the leg of the victim Geeta Devi, but in the instant case neither the

material exhibit - bullet recovered from leg was produced nor the I.O. was examined and admittedly Saya and Sari which was ablaze in the firearm

neither seized nor produced in the Court. In that view of the matter, the prosecution case is doubtful and the learned trial Court has wrongly

convicted the appellant.

4. On the other hand learned Counsel for the state has opposed the prayer and submitted that the prosecution evidences have fully proved the case

beyond all reasonable doubts and hence the conviction of the appellant does not require any interference by this court.

5. After hearing both the parties and going through the records, I find that the prosecution case was started on the basis of fardbayan recorded on

24.07.1992 at 10.30 P.M., wherein the informant P.W. 6, Ramu Mahto stated that on 24.07.1992 at about 7.30 P.M., petitioner-accused

Kanchan Mahto, Bhim Mahto, Bharat Mahto and Balram Mahto entered his house. The house was opened and his wife was sitting inside the

house near the door of a room situated at southern side of the house. He was sitting inside the room and his son Pintu, who was about six years,

was studying there. Kanchan Mahto was carrying a pistol in his hand and rest accused persons were carrying lathis. They trespassed inside the

house and Kanchan Mahto asked about the informant from his wife in filthy languages and told her that today your husband will be murdered by

firearm. When accused persons could not see the informant, Kanchan Mahto told that your husband is not present here then you will be killed by

me and he fired from pistol upon his wife with intention to commit her murder. Thereafter, he fired upon her causing injury on the right knee.

Thereafter, the accused persons fled away towards north of the house then he made hulla whereupon, other witness namely Chatur Khano and

Bhikho Khano came from Mathurapur Station and he told about the occurrence to them. It is also alleged that the accused were annoyed because

the informant was a witness in a murder case, which is pending in the Court.

6. On the basis of the said fardbayan, police registered a case under Sections 448, 307/34 of the Indian Penal Code and 27 of the Arms Act

against the accused persons and after investigation, police submitted charge-sheet in the case against four accused persons under the aforesaid

Sections. Since, the case was exclusively triable by the court of Sessions, after taking cognizance learned Chief Judicial Magistrate committed the

case to the court of Sessions and subsequently, the case was tried by learned 3rd Additional Sessions Judge, Deoghar, who found the appellants

guilty under Sections 448, 326 of the Indian Penal Code and 27 of the Arms Act and sentenced him as aforesaid and acquitted other accused

persons.

7. It appears that in the course of the trial, the prosecution has examined as many as ten witnesses.

P.W.1, Mahadeo Modi has turned hostile.

P.W.2, Nepal Prasad Verma is hearsay witness.

P.W.3, Suchit Prasad Yadav is hearsay witness.

P.W.4, Prem Kumar Mahato P.W.5, Subhash Prasad Burnwal is hearsay witness.

P.W.6, Ramu Mahto, the informant of the case.

P.W.7, Ram Sharan yadav has proved the fardbayan.

P.W.8, Chatur Rawani is hearsay witness.

P.W.9, Geeta Devi, victim lady and wife of the informant.

P.W.10, Dr. P. Chandra.

P.W.2, Nepal Prasad Verma, P.W.3, Suchit Prasad Yadav, P.W.5, Subhash Prasad Burnwal and P.W.8, Chatur Rawani are hearsay witness

and they had come after the occurrence and stated that they had seen injured, wife of the informant, Ramu Mahto, who had injury on her right leg.

P.W. 6 Ramu Mahto and P.W. 9 Geeta Devi two witnesses in the place of occurrence, who identified all the accused. Investigating Officer of the

case has not been examined and the F.I.R. has been proved by formal witness, P.W.7, Ram Sharan Yadav. Dr. S.K. Bajpayee, who examined

the injured, has died and as such he has not been examined.

P.W.9, Geeta Devi, victim lady and wife of she informant, stated in the Court that on the date of occurrence about at 7.30 P.M. in the evening she

was sitting in her house, a Dibri was burning. When the accused persons namely Kanchan Mahto along with Bhim Mahto, Bharat Mahto and

Balram Mahto entered her house, Kanchan Mahto abused her and asked her that where is your husband and further said that you are fighting

case. When she did not disclose the whereabouts of her husband, Kanchan Mahato fired from his pistol upon her, due to which she sustained

injury on her right knee (she shown the mark of operation on her right knee). When accused persons fled away, she made hulla thereafter,

witnesses came from Midnapur Station then she old about the occurrence to them. She also said that treatment was done in the Sadar Hospital,

Deoghar and in course of the treatment the bullet was operated out from her knee. She identified the accused in the Court. In paragraph-7 of

cross-examination, she stated that where she was sitting there is no door or chokat in the house. Dibri was on the floor and her leg was covered by

saya and sari. In paragraph-8, she stated that Kanchan Mahato asked about her husband then she told that her husband is not present in the

house. Kanchan Mahato was standing at a distance of about 2 to 3 cubics and from there he fired from his pistol upon her, due to which she

sustained injury on her right knee and hole was caused in saya and sari and that a part of sari was burnt. She also told that her husband entered

inside the house hearing the sound of accused persons. She denied that her husband was practicing to fire from pistol and during the course of that

she received injury and wrongly implicated the accused persons due to enmity.

P.W. 6, Ramu Mahto, informant, stated in the Court that on 24.07.1992 at about 7.30 P.M., he was in the house and his wife was sitting in the

varandah. Kanchan Mahto, Bhim Mahto, Bharat Mahto and Balram Mahto entered his house, the house was opened. Kanchan Mahto abused his

wife and asked her where is your husband and told her that today your husband will be murdered by firearm. He further asked about the informant

from his wife in filthy languages that where is your husband if you will not tell about him then I will kill you by firearm thereafter, he fired from pistol

upon his wife with intention to commit murder, caused injury on her right knee. After the firing he and his son made hulla whereupon they fled

away. Where firing was done, only four houses are there and one of the house is of informant P.W.4. and other two houses belong to the accused

persons. On their hulla, some persons and home guard personnel arrived on the place of occurrence. They saw his wife with injured condition.

Thereafter, he and his wife told about the occurrence to them. He also stated that his brother Kamdeo Mahato murder three years back by the

accused persons due to land dispute. After the occurrence, they went "fadhi" where homeguard directed to go to the police station then he and his

wife went to the police station jashidih and his wife sent to the hospital and a case was lodged. He further Stated that the cartridge was extracted

by Dr. P. Chandra. In paragraph-6 in his cross-examination he stated that his wife was sitting near the door of east room, there was no chokath

and Kiwadhi and he was inside the room and his son pintu, who was six year old, was studing there. The distance between the varandah and door

of the east room is almost 3 hands. He further stated that when he saw the accused to trespass inside the house he entered in the room. Dibri was

burning in varandah. In paragraph-9 he stated that he shown the saya & sari to the Investigating Officer, but the same were not seized by the

Investigating Officer.

8. Thus, it appears from the evidence of two witnesses, it has been proved that the firing was done due to which P.W.9 Geeta Devi received injury

on her right leg, but it is difficult to come to a conclusive finding that the firing was done by Kanchan Mahato which improbably caused injury to the

appellant. Learned Counsel for the appellant submitted that it is not probable that while the accused persons came to commit the informant's

murder and the actually fired upon his wife and her husband was present just three hands inside the room and he will not come out and try to save

her. He further stated that it is also not probable that the accused-appellant along with three others entered inside the house will only inquired from

his wife. There was no door in the other room and lantern was burning and it is highly improbable that they will not enter the room and search for

the informant in that room. More so, distance was only three hands. It is also not probable that when the lantern was burning in a small room and

there is no door in the room, the accused could not have seen the informant present in the room He has also stated that due to old enmity, which is

apparent from the F.I.R. and evidence also, that there is a chance that the injured P.W.9 Geeta Devi received injury somewhere else for whom

they have falsely implicated the appellant. It is also important to note that although, the injured P.W.9 Geeta Devi has admitted that due to firearm

there was hole in Saya and Sari and Sari was burnt, but neither Sari nor Saya was produced in the Court. P.W.9 also stated that the cartridge was

extracted by Dr. P. Chandra, but the same was neither given to the police nor produced in the Court. The accused were arrested from his house

after two days, but no pistol was found in his possession or in his house nor the same has been produced in the Court.

In that view of the matter, seeing the improbability and absence of the material evidences, it is difficult to come to a conclusive finding that the

firearm was done by the appellant accused Kanchan Mahato. In that view of the matter, he is being given benefit of doubt and acquitted from the

charges.

9. Accordingly, this appeal is allowed and order of conviction dated 28.03.2000 and sentence dated 31.03.2000 respectively passed in S.T. No.

230 of 1992 by Sri Prabodh Ranjan Das, 3rd, Additional Sessions Judge, Deoghar is set aside. Since, the appellant is on bail, he is released from

the bondage of bail.