

Dular Mahto and others

Vs

State of Bihar

Criminal Appeal No.222 of 1981

(S. R. Pandian, Smt. M. S. Fathima Beevi JJ)

26.03.1992

JUDGMENT

1. These appeals are preferred by the appellants 1 to 11 who all stand now convicted under S. 302 read with S. 149 of the Indian Penal Code and sentenced each to undergo imprisonment for life. The High Court before which all the thirteen convicted accused filed their criminal appeal No. 5 / 75, dismissed the said appeal in respect of the 11 appellants herein but acquitted two convicted accused namely, Surdhan Mahto and Nanhu Mahto who were appellants Nos. 1 and 3 before the High Court.

2. According to the prosecution, the present appellants 1 and 11 along with some others caused the death of the deceased Puran Mahto on the midnight of 2nd December, 1971 whilst the deceased was in his Kumba at village Saram within the limits of Barmu Police Station. According to the prosecution, this Kumba was constructed under a big banyan tree. The motive for the murder is that on an earlier occasion, the brother of the present deceased by name Ganesh had been murdered. The deceased Puran Mahto assisted the prosecution in that case in which some of the appellants before us were implicated as accused. On account of this earlier incident, the appellant entertained hostility towards the deceased Puran Mahto and resorted to put an end to the life of the deceased herein.

3. We heard learned counsel for both the parties and perused the records very scrupulously. The prosecution has examined P.Ws 4, 5, 6, 8 and 9 as eye-witnesses to the occurrence of whom P.W. 9 has been treated as hostile. P.W. 8 is the brother of the deceased. P.Ws. 3 and 9 were the servants of the deceased. P.W. 5 was a neighbour and he is an independent witness. At the time when the deceased was sleeping inside his Kumba (thatched hut), P.Ws. 3, 5, 6 and 9 were sleeping near about guarding the paddy at the deceased's khalihan.

4. P.W. 2, the wife of the deceased claims to have gone to the scene on the hearing a hue and cry. She states that she saw the accused leaving the scene of occurrence and she identifies A3, A4, All and A13. Though P.Ws. 5 and 6 speak of the participation of all the 13 persons attacking the deceased with lathis and barchi, the rest of the witnesses do not support the testimony of P.Ws. 5 and 6 in its entirety but they speak about the participation of only some of the accused persons. Therefore, the question that arises for our consideration is as to whether the prosecution has satisfactorily established the participation of all the appellants herein or some of them.

5. Admittedly, the appellant Nanhu Mahto (appellant No. 3 before the High Court since acquitted), Mahip Mahto and Sadhwa Oraon (appellants Nos. 2 and 11 in the present appeal) were injured and in fact it is admitted by the defence that these accused persons were attacked by the deceased and his

men. In other words, the presence of the above three persons at the scene of occurrence cannot be doubted. P.W. 4 who is an independent witness and against whom no motive is established speaks of the presence of Nanhu Mahto, appellant No. 6 (Gopi Mahto), appellant No. 9 (Lakkan Mahto) and appellant No. 11 (Sadhwa Oraon). As we have earlier pointed out, P.W. 2 who had gone to the scene of occurrence speaks of the presence of 5 persons viz. Nanhu Mahto, Mahip Mahto, Gopi Mahto, Lakkan Mahto and Sadhwa Oraon. Thus, from the overall evidence, we hold that the presence of Nanhu Mahto and the appellants Nos. 2, 6, 9 and 11 viz. Mahip Mahto, Gopi Mahto, Lakkan Mahto and Sadhwa Oraon in the scene cannot be disputed and their participation is well established beyond any doubt. So far as the rest of the appellants are concerned, viz. appellants Nos. 1, 3, 4, 5, 7, 8 and 10 in the present appeal, the evidence is not so convincing and acceptable to convict them under the charge of murder. In the result, we, by giving the benefit of doubt, hold that the appellants Nos. 1, 3 to 5, 7, 8 and 10 are entitled for acquittal.

6. Accordingly, we acquit Dular Mahto (appellant No. 1), Jainath Mahto (appellant No. 3), Harinath Mahto (appellant No. 4), Bhuwal Mahto (appellant No. 5), Hulesh Mahto (appellant No. 7), Ramgati Mahto (appellant No. 8) and Biglaha Uraon (appellant No. 10).

7. With regard to the rest of the appellants viz. appellants Nos. 2, 6, 9 and 11 we hold that they participated in the occurrence along with Nanhu Mahto. The learned counsel appearing on behalf of the appellants submits that these appellants were injured at the hands of the deceased and his men and, therefore, they are entitled to an acquittal on the plea of self-defence. But we are unable to agree with the learned counsel for the reason that the appellants whose presence at the scene and their participation in the occurrence are established had gone to the Khumba and started attacking the deceased along with others and that it was only during the course of that occurrence they sustained simple injuries.

8. In the result, the conviction of Mahip Mahto, Gopi Mahto, Lakkan Mahto and Sadhawa Oraon (appellants Nos. 2, 6, 9 and 11) under S. 302 read with 149 of the Indian Penal Code are confirmed as they had attacked the deceased along with Nanhu Mahto and some others. In view of the above, we confirm their conviction under S. 302 read with 149, I.P.C. and the sentence of imprisonment for life imposed on them.

9. In the result, the appeal is partly allowed and partly dismissed. Appeal partly allowed.

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