

# SUPREME COURT OF INDIA

Mukul Mahto.

Vs.

State of Jharkhand

CrI.A.Nos.862-863 of 2001

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

15.10.2008

## JUDGMENT

### **Dr.Arijit Pasayat, J.**

1. Challenge in these appeals is to the judgment of a Division Bench of the Jharkhand High Court, allowing the appeal filed by the State and thereby setting aside the acquittal of accused-respondents before it. All the five accused persons were convicted for offences punishable under Section 326 read with Section 34 of the *Indian Penal Code, 1860* (in short the `IPC') and were sentenced to undergo rigorous imprisonment for four years. Accused Durga was convicted for offence punishable under Section 324 IPC and sentenced to undergo imprisonment for one year. The revision petition filed by the informant was also disposed of. The learned Additional Sessions Judge, Dhanbad, had directed acquittal of the accused persons who are appellant Nos. 1 to 5 in the present appeal.

2. Background facts in a nutshell are as follows:

“On 12.8.1984 at about 7.30 p.m. while the informant was sleeping in his house, his brother Bistu Mahto (hereinafter referred to as the `deceased') visited his house to borrow his bullock. As soon as the deceased came out of the house, after talk with the informant, all the five accused way laid him and started to abuse him. The deceased retorted and exchanged abuses with them, whereafter, the accused persons assaulted and wounded the deceased with lathi and axe. On hearing his cry, the informant and others i.e. Golak Mahto (PW-3), Kirtan Mahto, Laxman Mahto (PW-8) and Jitu Mahto (PW- 7) rushed from their house to save the deceased. But the accused persons variously assaulted them as well as the informant with lathi and axe. Jaleshwar Mahto, Asu Mahto, Suphan Modi (not examined) and some other villagers had also witnessed the occurrence.

The further prosecution case is that deceased who had sustained bleeding head injury and the other injured namely PWs 3, 7, 8 and Kirtan Mahto were carried with the help of the villagers and admitted to the State Dispensary, Baliapur for treatment

wherefrom the deceased and PW-3 whose condition was serious were shifted to Sindri F.C.I. Hospital and after two days the deceased succumbed to the wounds in the hospital, while undergoing treatment.

On the basis of the information lodged, investigation was undertaken. After the death of the deceased on 15.8.1984 charge under Section 302 read with Section 34 IPC was added in addition to the registration of the case under Sections 341, 323 and 506 read with Section 34 IPC. Accused persons pleaded innocence. It was stated that accused Durga had instituted a case against 11 persons including the informant, the deceased, Golak Mahto (PW-3), Kirtan Mahto, Laxman Mahto (PW-8) and one Nitu Mahto. The trial Court came to hold that accusations were not established. The main reason given for the acquittal of accused persons was that PWs 1 and 2 were hearsay witnesses and PWs 4 and 6 are related to the deceased. They claimed to be the eye witnesses to the occurrence and were not cited in the first information report. PW-8 was an injured witness who had stated that when he reached the place of occurrence, none was present except the accused persons and the prosecution party and this falsified the claim of PWs 4 and 6 that they had witnessed the actual assault. One of the injured Kiran Mahto was not examined and no explanation was given for his non examination. The evidence of PWs 3, 7, 8 and 10 was held to be not sufficient though they claimed to have sustained injuries. Another factor which weighed with the trial Court was that the witnesses were close relatives of the deceased.

3. The High Court as noted above, reversed the conclusions and directed conviction.

4. In support of the appeals, learned counsel for the appellants submitted that the parameters of an appeal against acquittal have not been kept in view by the High Court. The trial Court had doubted the credibility of the so called eye witnesses PWs 3, 4, 6, 7, 8 and 10 who were relatives of the deceased. The High Court found that the evidence of PWs 3, 7, 8 alongwith PW-10 as well as the evidence of PWs 4 and 6 inspire confidence. The High Court found that the acquittal as directed was improper. It is submitted that the view of the trial Court was a possible view and, therefore, the High Court should not have interfered.

5. Learned counsel for the State has pointed out that the view of the trial Court is unsustainable. Even after applying the yardsticks highlighted by this Court the judgment of the High Court does not suffer from any infirmity.

6. The High Court has referred to the evidence of PWs 3, 7 and 8. It has been indicated that the doctor who examined these witnesses and the deceased initially, has not been examined during trial. Since the homicidal death has not been disputed, the non-examination of the doctor is not fatal. Another plea which found acceptance by trial Court was the absence of incised wound when weapon of assault was axe. The witnesses had also stated about use of lathi. It is also to be noted that, as done by the High Court that axes which are generally used in villages for cutting trees and branches are not so sharp like sword or knife and when used on the head, can also cause lacerated injuries. (See *Ch. Madhusudhana Reddy v. State of A.P.*<sup>1</sup>)

7. The matter can be looked from another angle. Even if they had not suffered any injuries yet their version as eye witnesses if credible and cogent can be accepted and acted upon and there is no reason to discard their evidence on the ground that a doctor who examined their injuries was not examined. The High Court has concluded that the evidence of PWs regarding the presence and participation of the accused in the occurrence is reliable and truthful. The victims of assault would not normally spare the real culprits and falsely implicate innocent accused persons. Their evidence clearly shows that the deceased was lying injured at the spot where the accused persons were present and they assaulted PWs 3, 7 and 8 when they went to rescue him. With reference to the evidence it has been noticed by the High Court that the common house of the deceased and PWs 3, 7 and 8, the eye witnesses is at a very short distance and it is quite natural that on hearing alarm they had rushed to the place of occurrence.

8. Apart from that the evidence of PW-10 the informant is of considerable significance. The High Court has noted that there were some exaggeration in his statement though reading the same carefully alongwith the evidence of PWs 3, 7 and 8 lends support to the prosecution case.

<sup>1</sup>1994 SCC (Crl.) 275