

Jharkhand High Court

Surender Mahtha & Ors. vs State Of Jharkhand on 14 September, 2011

Cr. Appeal No. 686 of 2002

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Against the judgment of conviction and order of sentence dated 21.09.2002 passed by the Learned Additional Sessions Judge, Fast Track Court No. - 4, Bokaro in Sessions Trial No. 82 of 1993 / T.R. No. 92 of 2002.

1. Surender Mahtha
2. Birender Mahtha
3. Dhirender Mahtha
4. Narender Mahtha
5. Harender Mahtha

Appellants

Versus

The State of Jharkhand

Respondent

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For the Appellants: Mr. R.N. Sahay, Advocate

For the State: Mr. D.K. Prasad, APP

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PRESENT

The Hon'ble Mr. Justice R.K. Merathia

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Judgment

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Dated 14h September 2011

By Court: This appeal arises out of the judgment dated 21.09.2002

passed by the learned Additional Sessions Judge, Fast Track Court No.-4, Bokaro in Sessions Trial No. 82 of 1993 / T.R. No. 92 of 2002 convicting the appellants under section 148/324/307/149 IPC and sentencing them to undergo S.I. for one year each under sections 148 and 324 IPC and three years under section 307 IPC. However, all the sentences were directed to run concurrently.

2. The prosecution case in brief is that the informant-Biranchi Mahtha (PW 6) lodged a farbdeyan stating that his family members and the family members of the accused persons are descendants of the common ancestor and there was a dispute between the female members of both the families over fetching of water from the river bed in the previous evening. When the informant learnt about the quarrel between the female members, he along with his brother went to Mukhia and informed him about the quarrel in writing. The Mukhia assured them to come to the village for inquiry. The informant and his brother returned back to their house and warned the female members of their family not to quarrel with the female members of the accused persons. In the next morning at about 6.00 AM, the informant and his brothers Sharad Mahtha (PW 1) and Kalipado Mahtha called the accused persons and asked them about the dispute between the lady members of both the families, on which the accused persons namely Surender Mahtha went inside his house and came with a Farsa and inflicted Farsa blow on Kalipado Mahtha causing bleeding injury on his head. The informant and his brother Sharad Mahtha tried to rescue his brother Kalipado Mahtha, but in the meantime, the accused Narender Mahtha, Birender Mahtha, Harender Mahtha and Dhirender

Mahtha came with Tangi, Rod and Lathi. Narender inflicted Tangi blow on the head of the informant causing bleeding injury. Accused Birender inflicted Tangi blow on the head of Sarad Mahtha causing fracture injury in his right hand when he tried to save himself. He also fell down on the ground. Harender and Dhirender inflicted Lathi blow on all the three brothers causing several injuries to the informant and his brothers. The occurrence took place just near the door of the house of the informant. The witnesses rushed to the spot after hearing alarm raised by the informant and his brothers. The injured were taken for treatment at State Dispensary where fardbeyan was recorded.

3. Mr. R.N. Sahay, learned counsel appearing for the appellants, submitted that there was a case and counter-case for the self same occurrence; and that the parties are relatives; and that there was no intention to cause murder; and that the incident took place due to quarrel between the female members of both the family and during hot exchange of words between the parties, though he is not seriously disputing the occurrence. He further submitted that the incident took place due to sudden provocation and therefore, the accused persons could at best be convicted under sections 334 and 335 IPC. He also relied on AIR 1988 Supreme Court 569 [Patori Devi & another vs. Amar Nath & others with State of Haryana vs. Amar Nath & others and Jai Narain & others]. He lastly submitted that the appellants reached at the advance age by now and therefore, it would not be proper to send them back to jail to serve out the balance sentence. He also submitted that though, appellants have remained in jail for about sixteen days only, but they have suffered the prosecution since 1988.

4. On the other hand, Mr. D.K. Prasad, learned counsel appearing for the State, supported the impugned judgment and submitted that Biranchi Mahtha-informant (PW6) sustained lacerated injury on his skull, though it was found to be simple in nature by doctor; and that Shard Mahtha suffered grievous fracture injury on his hand, Kalipado Mahtha suffered grievous injury on his skull caused by sharp cutting weapon which was dangerous for life, even as per the opinion of the doctor.

5. After hearing the parties and after going through the records carefully, it appears that the occurrence took place due to quarrel between the female members of the parties. The parties are relatives and are neighbours. I am not satisfied that the ingredients of section 307 IPC are made out against the appellants. All the three injured suffered single injury each and that too during hot exchange of words between the parties.

The injuries, if any, suffered by the informant party, has not been brought on record, though it appears that there is case and counter case between the parties.

6. The appellants were required to show that sections 334 and 335 IPC are attracted, but there is nothing to show that there was sudden and grave provocation by the injured persons. In the circumstances, the conviction under section 307 IPC is set aside and conviction under sections 148/149/324 IPC is sustained. However, I am of the opinion that no useful purpose will be served by sending back the appellants to jail for serving out the balance period of sentence. Parties have suffered this litigation since 1988. They are relatives and neighbours. The occurrence took place due to quarrel between their family members. The appellant-Surender Mahtha may be around 70 years, Birender Mahtha may be around 55 years, Dhirender Mahtha may be around 60 years, Narender

Mahtha may be around 75 years and Harender Mahtha may be around 80 years by now. The ends of justice would be met by imposing fine in lieu of imprisonment

7. Accordingly, the sentence is modified to the period already undergone by the appellants in jail. They are also directed to deposit fine of Rs. 4,000/- each within six weeks in the trial court. If one or other appellants fail to deposit the fine amount, he will undergo simple imprisonment for a period of three months. However, if the fine amount is deposited by one or other appellants, the learned trial court will discharge him from the bail bonds and will issue notice to the informant / his family members, who will be at liberty to withdraw the fine amount.

8. With this modification in the conviction and sentence, this appeal stands partly allowed.

(R.K. Merathia, J) Jharkhand High Court, Ranchi Dated 14th September 2011 Ranjeet/