

Supreme Court of India

Prasad Mahato vs State Of Bihar on 18 February, 1993

Equivalent citations: AIR 1993 SC 2477, 1993 CriLJ 3136

Author: A Anand

Bench: . A Anand, N Singh

JUDGMENT A.S. Anand, J.

1. The appellant along with his father Sheo Mahato was tried for offences under Section 302/34, I.P.C. by the learned Addl. Sessions Judge. Both were convicted for the said offence and sentenced to suffer imprisonment for life. On appeal to the High Court of Patna, Sheo Mahato was acquitted and the conviction of the appellant was altered from under one Section 302/34, I.P.C. to the one under Section 326, I.P.C. and he was sentenced to suffer rigorous imprisonment for five years. The appellant has filed this appeal by special leave against his conviction and sentence as recorded by the High Court.

2. On 18th of November, 1973, at about noon time, according to the prosecution case, the appellant Prasad Mahato armed with a balu and his father Sheo Mahato, armed with lathi went to the house of Bishun Mahato and inflicted injuries on his wife Rajpatia, who succumbed to the same and died. The husband of the deceased Bishun Mahato was the only eye-witness but unfortunately he died before the commencement of the trial and could not be examined. The First Information Report of the occurrence was lodged by PW-7 Bhola Mahato, son of the deceased at about 9.00 p.m. on the same day.

3. The prosecution sought to establish the case against the appellant and his father at the trial by evidence of Bhola Mahato and the other prosecution witnesses, namely Naku Sao PW-2 and Manaugi Sao, PW-3, who are the immediate neighbours of the deceased and had deposed at the trial that on learning about the murder of Rajpatia and having seen the appellant leaving with a blood-stained balua from the house of the deceased along with his father Sheo Mahato armed with a lathi, they proceeded towards the house of Bhola Mahato to inform him about the murder of his mother since Bhola Mahato was living in a separate house. Before Naku Sao PW-2 and Manaugi Sao, PW-3 could reach the house of Bhola Mahato, it transpires that Bhukhan Chamar had already reached his house and informed him of the murder. As Bhola Mahato, PW-7, was going to the house of his parents, he met Naku Sao and Manaugi Sao on the road who also gave him the information as noticed above. The post-mortem on the deceased was performed by Dr. S.P. Mukherjee who, however, was not examined, but the post-mortem report was proved at the trial.

4. The Division Bench of the High Court after considering the evidence on the record believed the testimony of Bhola Mahato, PW-7, as well as PW-2 Naku Sao and PW-3 Manaugi Sao who had seen the appellant coming out of the house soon after the murder with a blood-stained balua in his hand. The High Court rightly rejected the contention raised on behalf of the appellant that since there was some unestablished or substantiated alleged enmity between the appellant and the witnesses, the prosecution had not been able to establish the case. The evidence of Bhola Mahato, PW-7, through which we have been taken with the assistance of the learned Counsel for the appellant is straightforward and cogent. His testimony to the effect that he had been told by PW-2 and PW-3 of

having seen the appellant coming out of the house of the deceased with a blood-stained balua was not at all questioned in the cross-examination. Nothing else was also elicited in the cross-examination to discredit his testimony or throw doubts on his veracity. Being the son of the deceased, he would be the last person to let go of the real assailant and substitute him by an innocent person. We are in agreement with the opinion of the High Court that the evidence of PWs. 2, 3, 4 and 7 clearly established that it was the appellant who had assaulted Rajpatia with the balua. The High Court after taking note of the nature of injuries and the absence of any lathi injury on the deceased, as revealed from the medical report, gave the benefit of doubt to Sheo Mahato, father of the appellant and acquitted him. The State has not made any grievance by filing any appeal against the acquittal of Sheo Mahato and, therefore, it would be proper to hold that his acquittal was well merited.

5. So far as the appellant is concerned, the High Court after taking note of the injuries caused by the sharp cutting weapon balua and the other evidence on record found him guilty of an offence under Section 326 of the Penal Code. The evidence on the record fully justifies the conviction of the appellant for the offence under Section 326, I.P.C. and we see no reason to take a view different than the one taken by the High Court.

6. So far as the sentence is concerned, the appellant has already dealt with rather leniently and we do not find any reason to show any further indulgence to him in the matter of sentence either. This appeal, therefore, fails and is dismissed.

7. The appellant shall surrender to the bail bonds to undergo his sentence.