

Criminal Appeal (D.B.) No. 580 of 1996 (P)

Against the judgment and order of conviction and sentence dated 25.09.1996 (sentence passed on 28.09.1996) passed by Shri S. P. Singh, learned Sessions Judge, Deoghar in S. T. No. 32 of 1994.

1. Bhola Mahto (died)
2. Arjun Mahto
3. Badri Mahto
4. Kartik Mahto

All are residents of village Ratanpur, PS Mohanpur, Dist. Deoghar

... ... Appellants

Versus

The State of Bihar (now Jharkhand) Respondent

For the Appellants : Mr. Pran Pranay, Advocate

For the Respondent : Mr. Saket Kumar, A.P.P.

Present:

**HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE NAVNEET KUMAR**

C.A.V. on - 08.07.2024

Pronounced on - 13.08.2024

Heard Mr. Pran Pranay, learned counsel for the appellants and Mr. Saket Kumar, learned A.P.P. for the State.

2. This appeal is directed against the judgment and order of conviction and sentence dated 25.09.1996 (sentence passed on 28.09.1996) passed by Shri S. P. Singh, learned Sessions Judge, Deoghar in S. T. No. 32 of 1994 whereby and whereunder the appellants have been convicted for the offence punishable under Section 302 of I.P.C. and the appellant nos. 1 and 2 have been additionally convicted for the offence under Section 323 of I.P.C. and have been sentenced to undergo rigorous imprisonment for life for the offence under Section 302 of I.P.C. while the appellant nos. 1 and 2 have been sentenced to undergo rigorous imprisonment for six months for the offence under Section 323 of I.P.C. Both the sentences were to run concurrently.

3. The prosecution case arises out of fard beyan of Anapi Devi recorded on 16.12.1993 at 7:30 P.M. wherein it has been stated that her

brother-in-law Bhulak Mahto was issueless, who had adopted her son Paltu Mahto. This incident had enraged her other brother-in-law - Bhola Mahto. It has been alleged that on the date of occurrence i.e., on 16.12.1993, Bhola Mahto, Arjun Mahto, Maru Mahto, Badri Mahto and Kartik Mahto were constructing a house and putting tiles over it on the land of Bhulak Mahto and when her son Amik Mahto objected, Bhola Mahto while ordering others to assault had himself struck a sabal blow on the head of her son at which he fell down and thereafter the others who were variously armed had made indiscriminate assault upon her son. On hearing the commotion, several persons had assembled, who had witnessed the incident. Her son was taken to Mohanpur Govt. Hospital and thereafter to Sadar Hospital, Deoghar where in course of treatment he died.

4. Based on the aforesaid allegations, Mohanpur P. S. Case No. 199 of 1993 was instituted against the accused persons. On completion of investigation, charge-sheet was submitted after which cognizance was taken and the case was committed to the court of Sessions where it was registered as S. T. No. 32 of 1994. Charges were framed against the accused persons under Section 302 of I.P.C. and additionally against the accused Bhola Mahto and Arjun Mahto under Section 323 of I.P.C. which were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as 9 witnesses in support of its case.

6. P.W. 1 - Brihaspati Mahto has stated that Amik Mahto was murdered by Bhola Mahto, Arjun Mahto, Badri Mahto and Kartik Mahto. He was in his khalihaan when the incident had occurred and therefore he could not see the incident. When he reached the place of occurrence on hearing commotion, he had heard about the incident.

In cross-examination, he has deposed that Bhola Mahto had also instituted a case against him, his sons and others arising out of the same incident.

7. P.W. 2 - Samar Mahto had stated that at the time of the incident, he was in his house and on hearing a commotion he and his

brother went to the house of Amik Mahto where Bhola Mahto was armed with sabal, Maru with rod, Arjun with a lathi and Kartik with a gupti and they were assaulting Amik Mahto. Bhola Mahto had assaulted Amik Mahto with a spade on his head. When he tried to save Amik Mahto, he was assaulted on his hand with a spade by Bhola Mahto. Kartik and Badri had caught hold of him. Arjun had assaulted his brother with lathi.

In cross-examination, he has deposed that the land on which the occurrence had taken place is near the house of Bhola Mahto. He had not seen any injury on the person of Bhola Mahto. When he came to the place of occurrence, he had seen blood coming out of the hand of Amik Mahto and he had become unconscious on account of the assault as a result of which he could not take Amik Mahto to the hospital. He had not stated to the police that Bhola had committed assault on the head of Amik Mahto by spade.

8. P.W. 3 – Govardhan Mahto has stated that on the date of incident, he was in his khalihaan and on hearing the commotion, he went to the house of Amik where he found the accused persons variously armed committing assault upon Amik Mahto. When he had reached the place of occurrence, Amik was lying on the ground and the accused persons were assaulting him. When he tried to save Amik Mahto, he was threatened of assault and he had moved away. The dispute had arisen on account of tying of cattle. He has stated that the land belongs to Bhola Mahto.

In cross-examination, he has deposed that he had alone gone to the place of occurrence from his khalihaan. He was the first to reach the place of occurrence and when he reached the place of occurrence, he had seen blood coming out from the nose of Amik Mahto. He has seen the deceased being pierced on head by means of gupti.

9. P.W. 4 – Dr. Manju Jha was posted at Medical Officer at Mohanpur Primary Health Centre and on 06.12.1993, she had examined Baleshwar Mahto and had found the following injuries:

- (i) *One lacerated wound 1 ½" x ¼" x 1/6" on middle of the vertest.*
- (ii) *One lacerated wound 1"x 1/6"x 1/8" on right side of vertest.*

(iii) *One bruise 2"x 2"on dorsal of right.*

All the injuries were opined to be simple in nature caused by hard and blunt object such as lathi. She has proved the injury report which has been marked as Exhibit 1. She has examined Samar Mahto on 17.12.1993 and had found the following injuries on his person:

- (i) *One lacerated wound 1"x 1/6"x 1/8" on left side of forehead just above the left eye brow.*
- (ii) *One bruise 2"x 3"on back of lower third right forearm.*
- (iii) *One bruise 2"x 3" on back of lower third right forearm.*

All the injuries were found to be simple in nature and were caused by hard and blunt object. She has proved the injury report which has been marked as Exhibit 1/1.

10. P.W. 5 – Baleshwar Mahto has stated that at the time of the occurrence, he was in his khalihaan and on hearing the cry of alarm, he had gone to the land of Mulak Mahto along with his brother Samar Mahto. He had seen Amik Mahto being assaulted by Bhola, Maru & Arjun and Badri as well as Kartik were holding him. When he tried to save Amik Mahto, he was assaulted with lathi danda and his brother Samar was also assaulted.

In cross-examination, he has deposed that when he reached the place of occurrence, Amik Mahto was standing, but after the assault he fell down and became unconscious. On the same day, a case was lodged by Bhola against him, his brother and Amik. A proceeding under Section 107 of Cr.P.C. was earlier going on between him and others which was initiated by Bhola Mahto.

11. P.W. 6 – Janardan Mahto has stated that at the time of the incident, he was in his field and on hearing the cry of alarm, he had gone to the house of Amik Mahto, where he saw Amik Mahto lying flat on his face. He had seen Bhola, Maru, Arjun, Kartik and Badri and he had told them not to commit assault and thereafter he left the place. He has stated before the police that Bhola with a spade, Arjun with a lathi, Maru with rod, Badri with lathi and Kartik with gupti were committing assault upon Amik Mahto. He has also stated before the police that when he raised an objection, he was subjected to assault. He had taken Amik to the hospital. The fard beyan of Anapi Devi was recorded in his presence

and which has been signed by him and the same has been proved and marked as Exhibit 2. He has also identified his signature on the inquest report which has been marked as Exhibit 2/1.

In cross-examination, he has deposed that between his farm and the house of Amik is the house of his brother Govardhan. Amik had fallen down on his doorsteps. Several persons had assembled there. The accused persons also assembled. When the accused persons left after some time, Amik was taken to the hospital. Amik and the accused persons were related to each other. The concerned land was claimed by both Bhola and Amik.

12. P.W. 7 - Dr. M. A. Sattar was posted as Civil Assistant Surgeon in Sadar Hospital, Deoghar and on 17.12.1993 he had conducted autopsy on the dead body of Amik Mahto and had found the following ante mortem injuries:

- (i) *Blood clots in the buccal cavity, nostrils and ears.*
- (ii) *Lacerated injury on the top of head from front to back, 5"x ½"x over bone deep with blood clots.*
- (iii) *Lacerated injury on right side of the head above ears, 3"x ½"x over bone deep with blood clots.*
- (iv) *Lacerated injury on left side of head, above ear, 2 ½" x ½" x over bone deep, with blood clots. Swelling of both sides right and left with four bruise marks of different shape and sizes.*

The cause of death was opined to be haemorrhage and shock as a result of grievous multiple skull injuries caused by hard and blunt substance like lathi, sabal etc. He has proved the post mortem report which has been marked as Exhibit 3.

13. P.W. 8 - Anapi Devi is the informant who has not supported the case of prosecution and was accordingly declared hostile by the prosecution.

14. P.W. 9 - Ashok Kumar Mishra has proved the seizure list which has been marked as Exhibit 4. He has also proved the formal FIR which has been marked as Exhibit 5.

15. The statements of the accused persons were recorded under Section 313 of Cr.P.C. in which they have denied their complicity in the murder of Amik Mahto.

16. It has been stated by Mr. Pran Pranay, learned counsel for the appellants that there are no eye-witnesses to the occurrence. He has submitted that the only eye-witness being the informant has turned hostile. The investigating officer of the case has not been examined which has caused prejudiced to the defence.

17. Mr. Saket Kumar, learned A.P.P. has stated about the evidences of P.W. 4 & P. W. 5 apart from the evidences of P.W. 3 and P.W. 6 who also have seen the assault committed upon Amik Mahto by the appellants.

18. We have heard the learned counsel for the respective sides and have also perused the trial court records.

19. The fard beyan of the informant would clearly indicate about the informant having witnessed the incident of assault committed upon her son. She in her fard beyan has also stated about the presence of Govardhan Mahto, Janardan Mahto, Babu Mahto and Sakli Devi. The informant in her evidence as P.W. 8 has denied to have seen the occurrence and was declared hostile by the prosecution. Bablu Mahto and Sakli Devi have not been examined by the prosecution. The evidence of Govardhan Mahto reveals that he was the first to reach the place of occurrence and he had seen blood oozing out from the head and nose of Amik Mahto which would mean that the assault had already taken place by then. P.W. 6 has stated about Amik Mahto lying at his door steps when he had gone to the place of occurrence on hearing the cry of alarm. He thereafter paused to add about the accused persons variously armed and there was assault upon Amik Mahto. He has not stated about the presence of P.W. 3 and P.W. 6 and the same cannot be relied upon as an eye-witness account. P.W. 2 and P.W. 5 are the injured witnesses who have suffered simple injuries on account of the assault committed upon them by the appellant nos. 1 and 2. These witnesses have also not taken the name of P.W. 3 and P.W. 6 as the persons who were present and who had witnessed the incident. The cross-examination of P.W. 2 reveals that the assault had already taken place when he had reached the place of occurrence. The assault committed upon P.W. 2 and P.W. 5 seems to be on account of previous enmity with

Bhola Mahto as a proceeding under Section 107 of Cr.P.C. was also going on between them. In fact the evidence of P.W. 5 further reveals that the accused persons had also instituted a case against them relating to the same incident. The investigating officer could have been confronted with the disclosure of the witnesses in order to contradict the same, but the non-examination of the investigating officer has caused prejudice to the defence. The prosecution has therefore failed to prove the involvement of the appellants in committing the murder of Amik Mahto.

20. We therefore set aside that part of the judgment and order of conviction and sentence dated 25.09.1996 (sentence passed on 28.09.1996) passed by Shri S. P. Singh, learned Sessions Judge, Deoghar in S. T. No. 32 of 1994 by which the appellants have been convicted for the offence under Section 302/34 of I.P.C. So far as the conviction under Section 323 of I.P.C. is concerned, the assault by the appellant nos. 1 and 2 upon P.W. 2 and 5 seems to be an issue incidental to the rivalry or enmity existing between the parties. The medical report also corroborates the allegations of assault. We therefore affirm the conviction of appellant nos. 1 and 2 for the offence under Section 323 of I.P.C. The appellant no. 1 (Bhola Mahto) during the pendency of the appeal has died and the appeal has abated, so far as appellant no. 1 is concerned. The incident is of the year 1993 and more than 30 years have passed since then. On an overall conspectus of the case, we therefore, modify the sentence imposed upon the appellant no. 2 for the offence under Section 323 of I.P.C. to the period already undergone in custody.

21. This appeal stands disposed of.

22. Pending I.As, if any stands closed.

(Rongon Mukhopadhyay, J.)

(Navneet Kumar, J.)

Jharkhand High Court at Ranchi
The 13th day of August, 2024
R. Shekhar/NAFR/Cp. 3