

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.379 OF 2010

Madan Mohan Mahto

....Appellant(s)

VERSUS

State of Jharkhand
Thr. Its Chief Secretary
Secretariat, Jharkhand
at Ranchi

....Respondent(s)

WITH

CRIMINAL APPEAL No.332 OF 2011

Jagmohan Mahto

....Appellant(s)

VERSUS

State of Bihar (now Jharkhand)
Thr. Its Chief Secretary
Secretariat, Jharkhand
at Ranchi

....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. These appeals are filed against the final judgment and order dated 03.02.2009 of the High Court of Jharkhand at Ranchi in Criminal Appeal No.270 of 2001 whereby the High Court dismissed the appeal filed by the appellants herein and affirmed the order dated 05.07.2001 of the Trial Court in Sessions Trial No.310 of 1993.

2. In order to appreciate the controversy involved in these appeals, it is necessary to set out the facts hereinbelow.

3. Four persons, namely, Madan Mohan Mahto, Jagmohan Mahto, Charka Mahto and Bihari Mahto were prosecuted and eventually convicted for commission of offence of murder of one Jitu Mahto under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as

“IPC”) by the Sessions Judge and were accordingly awarded life sentence.

4. All the four accused felt aggrieved and filed an appeal before the High Court. By impugned order, the High Court dismissed the appeal and upheld the order of the Trial Court, which has given rise to filing of the four criminal appeals by four accused in this Court.

5. During pendency of the appeals, two accused, namely, Charka Mahto and Bihari Mahto died, therefore, two appeals, namely, Criminal Appeal Nos. 122/2010 and 1298/2010 were dismissed as having abated by order dated 01.02.2019.

6. We are now concerned with the remaining two criminal appeals, i.e., Criminal Appeal No. 379/2010 filed by accused - Madan Mohan Mahto and Criminal Appeal No. 332/2011 filed by accused - Jagmohan Mahto.

7. In short, the case of the prosecution against the appellants is as under:

8. On 19.11.1985 at around 12 noon, Kuila Mahto (informant), Jitu Mahto (deceased), Butru Mahto and Jagran Mahto s/o Butru Mahto were harvesting paddy in their field. At that time, four above-named accused armed with Tangi, Pharsa and Gun arrived at in the field. Accused, Madan Mohan Mahto, was having a gun and he fired three gunshots, which resulted in three persons fleeing away from their field. However, Jitu Mahto could not flee and was surrounded by the said four accused. Accused, Jagmohan Mahto, was having a Tangi and he, with the use of Tangi, cut Jitu Mahto's right palm and accused-Bihari Mahto and Chrka Mahto hit Jitu Mahto with the stone on his head resulting the death Jitu Mahto on the spot.

9. The FIR was lodged on 20.11.1985 in the early morning (6 a.m.) by Kuila Mahto (informant)

narrating therein the incident, as mentioned above, naming four accused including the manner in which they committed the murder of Jitu Mahto. This led to investigation by the police sleuths, who recorded the statements of the witnesses, obtained the post-mortem report, collected the evidence and apprehended the accused persons.

10. The charge sheet was filed and the case was committed to the Sessions Court for trial. The prosecution examined as many as six witnesses. The statements of accused persons were recorded under Section 313 of the Code of Criminal Procedure, 1973. The accused denied their involvement in the alleged crime.

11. By judgment/order dated 05.07.2001, the Sessions Judge convicted all the four accused persons for commission of the offence of murder of Jitu Mahto and sentenced them for life imprisonment under Section 302 read with Section

34 IPC. In an appeal filed by all the four accused, the High Court, by impugned order, dismissed the appeal and confirmed the conviction and sentence of all the four accused.

12. Heard learned counsel for the parties.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.

14. At the outset, we consider it apposite to state that when the two Courts below in their respective jurisdiction have appreciated the entire ocular evidence, then this Court would be very slow in exercise of its appellate jurisdiction under Article 136 of the Constitution to appreciate the evidence afresh unless the appellants are able to point out that the concurrent finding of two Courts below is wholly perverse or is recorded without any evidence or is recorded by misreading or ignoring the material evidence.

15. We consider it apposite to recall the apt words of Justice Fazal Ali-a learned Judge while speaking for the Bench in the case of **Lachman Singh vs. State** (AIR 1952 SC 167 at page 169) when his Lordship observed *“It is sufficient to say that it is not the function of this Court to reassess the evidence and an argument on a point of fact which did not prevail with the Courts below cannot avail by the appellants in this Court.”*

16. Despite this, we felt that since the leave has been granted to the appellants to file these appeals, it is just and proper to peruse the evidence and, particularly, the evidence of Jagran Mahto (PW-1) and Kuila Mahto (PW-2).

17. These two witnesses were the eye-witnesses to the incident. Kuila Mahto (PW-2) was the informant, who lodged the First Information Report. The accused persons and these two witnesses knew each other very well. Both these witnesses, in

categorical terms, maintained their version in their respective statements that the appellant-Madan Mohan Mahto fired the gunshot and the appellant-Jagmohan Mahto hit with a Tangi on the right palm of Jitu Mahto and other two accused, namely, Bihari Mahto and Charka Mahto, who are now dead, hit on head of Jitu Mahto with stone. There was neither any contradiction nor any inconsistency in their statements on material version such as on the question of identity of the accused, who hit, where the assault was made and who fired. This version was also stated in the FIR naming all the four accused.

18. The doctor (PW-3), who performed the post mortem, confirmed that the weapon used by the accused persons could cause the injuries and also confirmed the areas where the injuries were caused. It corroborates with the statements of eye-witnesses (PWs 1 & 2).

19. The incident occurred in a broad daylight in the afternoon. It was an admitted fact that there was a rivalry going on between them on account of a land dispute. The two Courts below believed both these witnesses (PWs 1 & 2) and, in our opinion, rightly.

20. We are unable to notice any kind of infirmity, illegality or perversity in the approach of the two Courts below while holding that the prosecution proved the case beyond reasonable doubt against all the accused persons under Section 302/34 IPC. A case of common intention under Section 34 IPC stood fully made out against all the accused persons because it was proved that all the accused came together armed with lethal weapons in their hands with an intention to attack the persons working in the field. Three persons, named above, including PWs 1 and 2 could manage to flee from the field but Jitu Mahto was not able to flee and

was caught hold by the accused persons. He was, therefore, brutally assaulted by all the accused persons with the aid of Tangi and stone on his hand and head due to which he died on the spot.

21. Though learned counsel for the appellants in both the appeals made attempt to argue that there were contradictions in the evidence of these witnesses but, as mentioned above, we are unable to notice any material contradiction in their evidence.

22. In view of the foregoing discussion, the appeals are found to be devoid of any merit. The appeals thus fail and are accordingly dismissed.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[DINESH MAHESHWARI]

New Delhi;
February 07, 2019