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MUKUL MAHTO AND ORS.

v.

STATE OF JHARKHAND AND ANR.
(Criminal Appeal Nos. 862-863 of 2001)

OCTOBER 15, 2008

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[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

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Penal Code, 1860 – ss. 326 r/w s. 34 – Accused assaulting deceased with lathi and axe resulting in his death – Eye-witnesses also injured – Acquittal by trial court since accusation not established – However, conviction u/s. 326 r/w s. 34 by High Court considering the manner of assault and the surrounding factors – Interference with – Held: Not called for – High Court held that the evidence of prosecution witnesses regarding the presence and participation of accused in the occurrence was reliable and truthful – Victims of assault would not normally spare the real culprits and falsely implicate innocent accused persons – Also evidence of informant of considerable significance – Further, non-examination of doctor who examined the witnesses not fatal as also absence of incised wound when weapon of assault was axe.

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According to the prosecution case, on the fateful day, accused persons way laid the deceased and abused him. When the deceased retorted back, accused persons assaulted the deceased with lathi and axe. On hearing the cries, the informant and PW-3, PW-8, PW-7 rushed from their house to save the deceased and they were also assaulted. Three villagers witnessed the incident. The deceased and the injured prosecution witnesses were taken to the hospital. Two days later, the deceased succumbed to his injuries. FIR was lodged. Investigation was carried out. Accused were charged u/s 302 r/w s. 34 IPC. Trial court acquitted them since the accusations were not estab-

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lished. However, High Court set aside the acquittal and convicted the accused u/s. 326 r/w s. 34 IPC and imposed rigorous imprisonment for four years. Accused D was convicted for offence punishable u/s 324 IPC and sentenced to one year imprisonment. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1.1 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. [Para 6] [485-B-C-D]

Ch. Madhusudhana Reddy v. State of A.P. 1994 SCC (Cri.) 275 – referred to.

1.2 Even if the witnesses 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 the prosecution witnesses 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

A 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. Apart
B from that the evidence of PW-10 the informant is of con-
siderable 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. [Paras 7
C and 8] [485-E-F-G]

1.3 The High Court found the present appellants
guilty. But considering the manner of assault and the sur-
rounding factors convicted them for offence punishable
under Section 326 read with Section 34 IPC. The judg-
D ment of the High Court does not suffer from any infirmity
to warrant interference. [Para 9] [486-B]

CASE LAW REFERENCE

1994 SCC (Cri.) 275 Referred to. Para 6

E CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
Nos. 862-863 of 2001

F From the final Judgment and Order dated 16.3.2000 of
the High Court of Judicature at Patna, Ranchi Bench, Ranchi in
Government Appeal No. 7 of 1990 (R) with Criminal Revision
No. 61 of 1990 (R)

Dr. K.D. Prasad, A.N. Deo and Satish Vig for the Appel-
lants.

G Rajesh Pathak and B.B. Singh for the Respondents.

The Judgment of the Court was delivered by

H 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

A 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 insti-
B tuted 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
C hearsay witnesses and PWs 4 and 6 are related to the de-
ceased. They claimed to be the eye witnesses to the occur-
rence 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
D 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
E Court was that the witnesses were close relatives of the de-
ceased.

3. The High Court as noted above, reversed the conclu-
sions and directed conviction.

F 4. In support of the appeals, learned counsel for the appel-
lants submitted that the parameters of an appeal against ac-
quittal 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.
G 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 confi-
dence. 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
H 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. A

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. 1994 SCC (Cri.) 275) B C D

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. E F G

8. Apart from that the evidence of PW-10 the informant is H

A 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.

B 9. The High Court found the present appellants guilty. But considering the manner of assault and the surrounding factors convicted them for offence punishable under Section 326 read with Section 34 IPC. The judgment of the High Court does not suffer from any infirmity to warrant interference.

C 10. The appeals are dismissed.

N.J.

Appeals dismissed.