

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.797 of 2017

Arising Out of PS. Case No.-121 Year-2002 Thana- JOGAPATTI District- West Champaran

1. Rameshwar Mahato @ Ramashray Mahato, Son of Late Yadu Mahto,
2. Lalmati Devi, Wife of Rameshwar Mahato @ Ramashray Mahato,
Both Resident of Village- Kohra Kanhi Tola, P.S. Srinagar (Yogapatti, Pujha Patjirwa), District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Umesh Kumar Singh, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-04-2024

We have heard Mr. Umesh Kumar Singh, the learned Advocate for the appellants/ Rameshwar Mahato @ Ramashray Mahato and Lalmati Devi and Mr. Dilip Kumar Sinha, the learned Additional Public Prosecutor for the State.

2. Both the appellants, who are husband and wife, have been convicted under Section 302/34 of the Indian Penal Code vide judgment dated 09-06-2017,



passed by the learned Additional Sessions Judge-cum-Fast Track Court No.2, Bettiah, in Sessions Trial No. 284 of 2004. By order dated 15-06-2017, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000/- each and in default of payment of fine to further suffer imprisonment for six months.

3. Both the appellants are alleged to have killed Yodha Mahato and his wife Thagiya Devi. Yodha Mahato (deceased) is the elder brother of appellant No. 1/ Rameshwar Mahato, whereas Thagiya Devi (deceased) is the wife of slain Yodha Mahato.

4. The First Information Report has been lodged by one Kashi Mahato (PW-10) on 24-07-2002 at 6:45 AM at village- Kohra Kanhi Tola at the door of the deceased/ Yodha Mahto alleging that on the same day, while he was sitting under a tree in front of his house, he saw appellant/ Rameshwar Mahato attacking the deceased/ Yodha Mahato by means of a *Khand* (a sharp cutting weapon) and as a result of which, Yodha Mahato had fell down on the ground. His younger brother by the same name, viz., Yodha Mahato



was coming from behind, who too was chased. However, appellant No.1 ran away on "*hulla*" raised by PW-10. One Ram Chandra Mahato is said to have told PW-10 that while he was returning after attending to the call of nature, he had seen the appellants fighting with the deceased persons. Appellant No. 2 brought the weapon of assault from her house and gave it to appellant No.1, with which appellant No.1 assaulted Thagiya Devi. As a result of such assault, Thagiya Devi died on the spot. Thereafter, Yodha Mahato was also injured. He has further alleged that there was dispute between the deceased persons and the appellants. Yodha Mahato was taken to hospital for treatment by the villagers. According to PW-10, the occurrence was witnessed by Ram Chandra Mahato, Shiv Raj Mahato, Deo Narayan Mahato (PW-1), Jhakad Choudhary(PW-8), Kari Choudhary (PW-7), Saral Mahato, Chandra Deo Mahato (PW-3) and many others.

5. On the basis of the afore-noted *fardebayan* statement of PW-10, a case *vide* Pujaha Parjirwa P.S. Case No. 121 of 2002 dated 24-07-2002 was registered for



investigation against the appellants.

6. The police after investigation, submitted charge-sheet against the appellants, whereafter they were put on trial.

7. The Trial Court after having examined 11 witnesses on behalf of the prosecution, including the Doctor who had conducted the postmortem on the dead bodies of the deceased, convicted the appellants for the offence under Section 302/34 of the IPC and sentenced them as aforesaid.

8. It has been argued on behalf of the appellants that none had seen the occurrence and only because the brothers, viz., Yodha Mahato (deceased) and appellant No.1 were not on good terms, the appellants have been made accused in this case. It has further been argued that the deceased did not have any issue and they had adopted the son of the brother-in-law of deceased/ Yodha Mahato. This had irked many and the possibility of both the deceased having been murdered on that account could not have been ruled out.



9. The other argument on behalf of the appellants is that the IO of this case has not been examined and, therefore, many things, which could have been unravelled, remained completely under dark.

10. That apart, it has been submitted that out of 11 witnesses examined at the trial, PWs. 1,2,3,4 and 6 did not support the prosecution case and were declared hostile. The falsity of the prosecution case, it has been argued, would further appear from the fact that one Kuber Bhagat (PW-9) is said to have lodged the First Information Report in the hospital where deceased/ Yodha Mahato was taken for treatment and where inquest on his dead body was held, but such statement which was earlier in point of time was not treated as FIR; rather the statement made by Kashi Mahato (PW-10) was made the basis of the FIR.

11. Lastly, it has been argued that in the absence of any eye-witness to the occurrence and only interested witnesses having examined at the trial, the prosecution has not been able to prove the case beyond all reasonable doubts.



12. As opposed to the afore-noted contentions, Mr. Dilip Kumar Sinha, the learned Additional Public Prosecutor submitted that Kuber Bhagart (PW-9) had seen the act of assault. Even Kashi Mahato (PW-10) had seen some part of the occurrence and was told by one Ram Chandra Mahato that the deceased/ Thagiya Devi was also assaulted by appellant No.1 with the weapon which was given to him by his wife/ appellant No.2. Shortly thereafter, appellant No.1 had given 2-3 blows on Yodha Mahato (deceased) who died in the hospital. Though, there is no evidence of the deceased/ Yodha Mahato having been taken to hospital and no report about his having been declared dead, but the inquest on his dead body was performed in the hospital. Rest other witnesses had also learnt from the villagers who had seen the occurrence and were witnesses to the assault perpetrated by appellant No.1 on both the deceased. Under such circumstances, no fault could be found with the opinion of the Trial Court that the appellants were responsible for the murder of both the deceased.

13. After having heard the learned counsel for the



parties, and after having perused the records, we have found that PW-10, on whose statement, the case proceeded, has been declared hostile. He has not claimed to have seen any part of the occurrence. Even in the FIR lodged by him, with respect to assault on Thagiya, the other deceased, he had come to learn about it from one Ram Chandra Mahato, who has not been examined at the trial. He had taken the name of Shivraj Mahato (not examined), Deo Narayan Mahto (PW-1), Jhakad Choudhary (PW-8), Kari Chouhdary (PW-7), Saral Mahato and Chandra Deo Mahato (PW-3) and several others, who had arrived at the P.O. We have further found that Deo Narayan Mahato, Yodha Mahato, Chandra Deo Mahato, Singhsan Prasad (PW's 1 to 4 respectively) and Manoj Prasad (PW-6) have not supported the prosecution case and have been declared hostile.

14. It is quite noticeable that Kashi Mahato (PW-10) who claimed to have seen some part of the occurrence, had also seen PW.2 coming from another direction, who too was chased by the appellant No.1, but immediately



thereafter appellant No.1 is said to have vamoosed away.

15. Bhikham Prasad (PW-5) does not claim to be an eye-witness to the occurrence. He was also not cross-examined and, therefore, only his examination-in-chief was on record. This does not help the prosecution case even a wee bit. Kari Choudhary (PW-7), who had arrived at the P.O., according to PW-10, only claims to have seen the appellant No.1 running away.

16. Jhakad Choudhary (PW-8) also does not claim to have seen the occurrence. The only person, who has claimed to be an eye-witness to the occurrence, is Kuber Bhagat (PW-9). At the trial, he has stated that at about 4 O'clock in the morning of the occurrence, he was asleep in the house of one Singhasan Prasad. He woke up only on hearing "*hulla*" that the deceased has been killed. When he came out of the house, he saw both the appellants and one Surendra assaulting Thagiya. It was at that time that Thagiya's husband/ Yodha Mahato came back after attending to the call of nature. He was then attacked by all the three, namely, the appellants and one Surendra. It was



only, thereafter, that the other witnesses had arrived.

17. The cause of occurrence as stated by him is the adoption by the deceased of the son of the brother-in-law, which had irked many and there had been a long standing land dispute between the two brothers, namely, appellant No.1 and deceased/Yodha. Though PW-9 claims that on his statement, the case was registered and investigation was done, but has contradicted himself only in the next breath that Kashi Mahato (PW-10) had got his statement registered at the P.O. and before he had made his statement in the hospital, where he had gone along with deceased and where the deceased was declared dead and inquest was performed on his dead body. He has himself admitted that the story of Kashi would be different from what he had to state before the police.

18. Kuber Bhagat (PW-9) was no outsider to the family. Deceased/Thagiya was his sister. Kuber had a brother called Lekha Mahato whose son was adopted by the deceased. PW-9 had been residing with the family of the deceased since he was 20 years of age. Some days prior to



the occurrence, a '*Panchayati*' had been held in which many of the prosecution witnesses had participated. In his cross-examination at paragraph-14, he has categorically stated that at the time of occurrence, he was sleeping in the house of Singhasan and when he had arrived on "*hulla*", Thagiya had already fallen on the ground injured. He had seen 8 to 10 wounds on her body. He became unconscious after seeing the blood on his sister's body. After recovering his consciousness, he did not take his sister to the hospital. His brother-in-law /deceased/ Yodha Mahato had also fallen on the ground near his sister. There were five wounds on the person of Yodha Mahato.

19. A comprehensive reading of the deposition of PW-9 makes it very clear that he had not seen any part of the assault. We have also found that one of the nephews of Yodha Mahato, namely, Bangar Mahato had been killed earlier in which some of the prosecution witnesses were made accused. The enmity was multi dimensional. The two brothers had land dispute and the adoption of a child by the deceased had also caused enmity with some. Since the



Investigating Officer has not been examined, not much could come to the fore.

20. Both the deceased persons were murdered by sharp cutting weapons which fact is without question. The postmortem was conducted by Doctor Rabindra Kumar (PW-11) who found several sharp cut incised wounds on the persons of the deceased. Both the deceased were brutally assaulted. However, who did it remains unknown. What was the trigger point for the occurrence to have started at 4 AM also remains unknown. One of the deceased/ Yodha Mahato was taken to hospital as claimed by PW-9. PW-9 had made a statement before the police in the hospital. The very fact that the inquest on the person of Yodha Mahato was done in the hospital lends credence to the fact that Yodha Mahato was taken to the hospital. By what mode and by whom has again remained a mystery.

21. In this background, we find it difficult to place complete reliance on the so-called eye-witness account of PW-9 who is the only witness claiming to have seen the entire assault on his sister and brother-in-law. The non-



examination of the I.O., therefore, has caused serious prejudice to the case of the appellants. None of the witnesses including PW-9 has stated before the trial Court about any specific role played by appellant / Lalmati Devi.

22. PW-10 (Informant) who has gone hostile has only stated in the FIR that Ram Chandra Mahato, a person, who was never examined had told him that both the appellants were fighting with Thagiya (deceased). In the meantime, appellant Lalmati Devi went inside her house and brought a sharp cutting weapon and handed it over to her husband Rameshwar Mahato @ Ramashray Mahato, who first killed Thagiya and then killed Yodha Mahato. This information was given to him by Ram Chandra Mahato, who has not been examined at the trial. The Trial Court appears to have solely relied upon PW-9, the brother-in-law of the deceased, who also had come to the place of occurrence only after Thagiya was injured and was lying on the ground. In fact, she had died by then. In his cross-examination, we have noticed that he saw the dead body of Yodha also a few meters away from the dead body of his wife (Thagiya).



Thus, PW-9 had also not seen any part of the occurrence.

23. Under such circumstances, it becomes really difficult for us to appreciate as to why only Yodha Mahato was brought to the hospital whereas, Thagiya was left behind and not even taken for primary treatment.

24. Thus, on an overall assessment of the facts of the case, we find that nobody had seen the occurrence. There was dispute between the appellant no.1 and his brother Yodha Mahato (deceased). There was partition in the family, which partition had happened much before. The deceased having adopted some relative could not have been a cause of concern for the appellants. It could have but created some controversy in the family of PW-9 because one of the sons of the brother of PW-9 was adopted by the couple who would have inherited the property. There is vague reference of there being a dispute because of such adoption as well. One of the nephews of the deceased was also murdered sometimes ago in which some of the prosecution witnesses were made accused.

25. All these facts only reflect that the correct



version about the case of occurrence and the manner of occurrence could not be brought forth.

26. The non-examination of the I.O. has further confounded the issue.

27. Thus, taking a holistic view of the matter, we find that there is no evidence with respect to the appellants having killed the two deceased.

28. For the afore-noted reasons, we give benefit of doubt to both the appellants and acquit them of charge of murder of the two deceased.

29. Appellant No.2/Lalmati Devi is on bail. Her liabilities under the bail-bonds are discharged.

30. Appellant No.1/Rameshwar Mahato @ Ramashray Mahato is in jail since 2017. He is directed to be released from jail forthwith, if not required or wanted in any other case.

31. The appeal is allowed.

32. The interlocutory application/s, if any, also stands disposed of.

33. Let a copy of this judgment be dispatched to



the Superintendent of concerned jail for record and compliance.

34. Let the records of this appeal be also returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Khatim Reza, J)

Rajesh/Shyam/
Sunil

AFR/NAFR	NAFR
CAV DATE	NA
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