

Criminal Appellate
PRESENT: The Hon'ble Mr. Justice Ashim Kumar Banerjee
And
The Hon'ble Mr. Justice Kishore Kumar Prasad

Judgment on : February 17, 2010.

C.R.A No. 275 of 1994
Kailash Mahato & Others
-Vs-
The State of West Bengal

Point:

Trial: Whether little contradictions and/or anomalies in evidence can per se upset the conviction and/or sentence so imposed by the Court below - Indian Penal Code – Ss 149, 323, 324.

Fact: The appellants preferred the instant appeal challenging the judgment of Ld. Sessions Judge whereby the accused were held guilty for the offences punishable under Section 302 read with Section 149 of Indian Penal Code / 324 read with Section 149 of Indian Penal Code / 323 read with Section 149 of Indian Penal Code

Held: Little contradictions and/or anomalies in evidence cannot per se upset the conviction and/or sentence so imposed by the Court below. (Paragraph – 16)

Cases cited: i) **Ram Kumar Pande –VS- the State of Madhya Pradesh** reported in **All India Reporter, 1975, Supreme Court, Page-1026.**

ii) **Sujoy Sen –VS- State of West Bengal** reported in **2007, Volume- VI, Supreme Court Cases, Page-32.**

iii) **Bhagga and Others –VS- State of Madhya Pradesh** reported in **Judgment Today (2007), Volume-XI, Supreme Court, Page-263.**

For the Appellant : Mr. Sekhar Bose
Mr. Himangshu Dey
Mr. Suman Dey
Mr. Navnil Dey
For the State : Mr. Ashimesh Goswami
Mr. Jayanta Narayan Chatterjee

ASHIM KUMAR BANERJEE.J:

1. On August 9, 1985 at about 10:30 a.m. there had been a free fight between supporters of Jharkhand Party and C.P.I.(M) in the village of Madhupur, District Purulia. Both the groups were armed with weapons. As a result of such fight, one Paban Majhi, son of late Bahadur Majhi and his wife was injured. Paban Majhi subsequently died. Altogether twelve persons were arrested and charge-sheeted and all of them faced trial after pleading not guilty of the offence charged against them the learned sessions Judge, Purulia vide judgment and order dated September 28, 1994 held the accused Kailash Mahato, Ashirbad Mahato, Sufal Majhi, Ramen Gorain, Sarju Gorain, Patal Majhi and Sakhinda alias Karia Mahato guilty for the offences punishable under Section 302 read with Section 149 of Indian Penal Code / 324 read with Section 149 of Indian Penal Code / 323 read with Section 149 of Indian Penal Code and acquitted rest of them from the charges. They were given imprisonment for life together with a fine of rupees one thousand each and in default to suffer rigorous imprisonment for six months for the offence punishable under Section 302 read with Section 149 of Indian Penal Code.
2. No separate sentences were awarded by the learned Trial Judge for the offences punishable under Section 324 read with Section 149 of Indian Penal code and 323 read with Section 149 of Indian Penal Code. Being aggrieved, all of them being seven accused preferred the instant appeal. During the pendency of the appeal before this Court, it was submitted that the appellants Patal Mahato died on May 25, 1999. This Court vide order dated February 20, 2009 directed Jhalda police station to make an enquiry but no report regarding the death of Patal was received.
3. PW-1 was the Chowkidar of the village who reported the incident to the police station. According to him, he knew Paban Majhi and his wife Rangini Majhi. He was at his house when at about 12 O' clock at noon Sonia, daughter of Paban went to his house and called him. On being informed, he went to the Danga Land where he met Rangini. He found Paban lying dead. Rangini told him that Paban had been murdered by "some people" and requested him to inform the police station.
4. PW-2, Putu Majhi was an eye-witness. He deposed that the place of occurrence was his land where Paban, and his wife were working. He categorically named Kailash, Asirbad, Gajia, Patal, Surya, Laona, Janu, Naresh, Karia, Pachua, Suklal and Sufal being assembled at the said land. He also deposed that the Paban was repairing the Ail of his land and his wife was uprooting the paddy seedlings. The accused persons armed with lathis, spears, farsa, bows, arrows and tangi attacked them. According to him, Kailash assaulted Paban with lathi, Asirbad assaulted him with farsa, Gajia hit him with tangi. Kailash assaulted him with farsa on the left side of his

head. He however did not see who assaulted Rangini as he became unconscious after being assaulted.

5. PW-3, Lachhmi Majhi was the sister in-law of Paban. She was also an eyewitness.

6. He identified Ramna who assaulted her with a lathi when she fell unconscious. She gave detailed description of the incident. In cross-examination, she however could not throw any light as to who specifically attacked others.

7. PW-4, Rangini was accompanying her husband working on the field. She also named Ashirbad, Kailash, Patal, Janu, Surya, Sufal and Ramna. According to her, Ashirbad, Kailash and Patal assaulted her husband. Ashirbad hit Paban with a lathi. Kailash assaulted him with tabla. Patal also assaulted him with tabla. Paban received injury on his head and Ashirbad assaulted him on his back. Accused Kuria assaulted her. Putu and her Kaki also received injury. She sent PW-1 to the police station to inform about the incident. PW-10 being the doctor deposed that she had treated Lachhmi Majhi, Rangini Majhi, Putu Majhi at the Primary Health Centre where they were brought with injuries on the fateful day. PW-11 was the police officer who investigated into the crime, so was PW-12.

8. DW-1 Surya Narayan was one of the accused. He deposed that Purna was his son who was aged nineteen years. DW-2, the headmaster of the local school deposed that Purna was a student of his school and his date of birth was August 18, 1970. Initially, apart from Purna, Sakhinda and Suklal the other accused were absconding. After being satisfied that Purna was a juvenile at the time of committing of the offence, the learned sessions Judge separated his case and framed charges as against eleven accused and proceeded accordingly. The learned Judge upon appreciation of evidence held the appellants guilty of the offences and imposed punishment as referred to above.

9. On a close analysis of the evidence it appears that the PW-1 categorically deposed that he saw Paban lying dead having multiple injuries on his body. He also saw Rangini having sustained injuries. PW-2 Putu gave a detailed narration of the incident. He categorically named the accused Kailash who assaulted Paban with lathi, Ashirbad with Farsa, Gazia with Tangi. He also categorically accused Kailash of hitting him with Farsa causing injury to the left side of his head. He also proved that Paban had died on the spot after sustaining injury. In cross-examination he, however, admitted that Patal had lodged a criminal case against him, so was Sufal and he was acquitted from

those cases. He however refuted the suggestion that it was a fight between members of the Jharkhand Party and C.P.I.(M) and the accused were falsely implicated.

10. Lachhmi being PW-3 corroborated Putu and once again narrated the incident. PW-4 Rangini also corroborated PW-2 and 3. PW-10 proved the injury sustained by Lachhmi, Rangini and Putu. PW-8 and 9 corroborated each other on the issue of carrying the dead body to the hospital and identifying the same to the autopsy surgeon. The post mortem report was tendered in evidence by consent of the parties and the same was marked as exhibit 4. It proved the injuries sustained by Paban. The autopsy surgeon also opined that the death was due to shock and haemorrhage as a result of head injury and chest injuries-homicidal and anti-mortem in nature.

11. Mr. Sekhar Bose, learned counsel appearing for the appellant contended as follows :

- i) Putu could not prove the ownership of his land as claimed by him. The place of occurrence was also not properly described by the prosecution witnesses and sufficient doubt arose from the depositions as would appear from the cross-examination of the PW-1.
- ii) In the FIR PW-1 did not name any accused. He also did not name any one while deposing before the Court below.
- iii) There had been contradiction between PW-2 and PW-4 while adducing before the Court below on the nature of the assault. PW-3 did not mention the name of the assailant except the one who assaulted her.
- iv) PW-4 mentioned the name of Patal that was not corroborated either by PW-2 or by PW-3.
- v) There had been contradiction not only on the place of occurrence but also on the nature of assault.
- vi) There were pending criminal cases as against the accused which might have prompted the other group to initiate false complaint with the police.

12. In support of his contention Mr. Bose cited the following decisions :

i) Ram Kumar Pande –VS- the State of Madhya Pradesh reported in *All India Reporter, 1975, Supreme Court, Page-1026.*

ii) Sujoy Sen –VS- State of West Bengal reported in *2007, Volume-VI, Supreme Court Cases, Page-32.*

iii) Bhagga and Others –VS- State of Madhya Pradesh reported in *Judgment Today (2007), Volume-XI, Supreme Court, Page-263.*

Let us discuss the cases cited by Mr. Bose.

i) Ram Kumar Pande –VS- the State of Madhya Pradesh (Supra)

– Head note C was relied upon. The Apex Court observed, “no doubt, an FIR

is a previous statement that can, strictly speaking, be only used to corroborate or contradict the maker of it. But omissions of important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.”

13. PW-1 was a Chowkidar of the village. He was post-occurrence witness. He was requested by the injured Rangini to make a complaint to the police station which he did. We do not find any inconsistency in the evidence of PW-1 and his written complaint made contemporaneously with the police authorities. It is true that he did not name any accused before the police. He could not name any person as he was never told. He offered an explanation to the said effect as discussed hereinbefore. There was no omission on the part of PW-1 in bringing any relevant fact before the police at the investigation stage or at the time of trial and he disclosed consistently what he knew about the case.

ii) Sujoy Sen –VS- State of West Bengal (Supra) – Paragraphs 11 to 14 of this decision were relied upon. The Apex Court observed that an FIR is a very vital material as it is the first information about the incident and has less chances of altering the version and improvement. A minor discrepancy in FIR will not be fatal. But discrepancy being a major one would definitely affect the result of the trial.

14. We are unable to appreciate how this proposition of law would help the appellant. In the present case we do not find any discrepancy in the FIR. It is true that the accused were not named in the FIR. FIR was lodged by PW-1. He consistently did not mention the name of the accused as he was a post occurrence witness and he lodged complaint on being asked by Rangini who could not mention the names of the accused to him as her condition was precarious because of head injury. We are unable to find out any scope of application of this ratio in the case before us.

iii) Bhagga and Others –VS- State of Madhya Pradesh(Supra) - This case was cited by Mr. Bose in support of his contention that Patal should get benefit of doubt as none except PW-4 named him. The Apex Court in this case observed, as regards the others since no specific role was attributed in the offence they were entitled to benefit of doubt and accordingly acquitted. It is well-settled principle of law that it is quality of evidence and not quantity that matters. PW-4 was injured. She sustained injury. She saw her husband being assaulted by the accused. She categorically deposed that Patal hit her husband with ‘tabla’. Such evidence could not be shaken during cross 11 examination. Hence, there was no scope for raising any doubt in the mind of the Court in that regard.

15. Mr. Ashimesh Goswami, learned Public Prosecutor while opposing the appeal

contended that PW-2, 3 and 4 being eye-witnesses to the incident gave detailed narration of the incident. They also sustained injury which was put by medical evidence. The post-mortem report proved the cause of the death of the victim who succumbed to the injury. He prayed for dismissal of the appeal and affirmation of the conviction and sentence imposed by the Court below.

16. As we have observed earlier, the incident was proved beyond doubt. The death of the victim was also proved, so was the cause of the death. Unlawful assembly as also injuries caused to PW-2, 3 and 4 were also proved. Hence, little contradictions and/or anomalies in evidence cannot per se upset the conviction and/or sentence so imposed by the Court below. It is true that PW-1 did not mention the name of the accused either in the complaint or during trial. He was a post-occurrence witness. He however offered an explanation during trial that Rangini did not disclose the names of the accused and her condition was bad. She had a bleeding injury on her head. A rustic villager who lost her husband during fued, also sustained serious injury on her head may not act prudently. When the death was proved and injuries were proved merely because she did not name those accused to the PW-1 could not per se upset her testimony. PW-2, 3 and 4 categorically narrated the incident. They corroborated each other. PW-2 specifically named Kailash, Ashirbad, Gajia being responsible for the death of Paban. PW-2 also blamed Kailash for assaulting him. He however could not name the accused who assaulted Rangini as he became unconscious having been assaulted by the accused. PW-3 named only Ramna assaulting her with a lathi when she fell unconscious. PW-4 corroborated PW-2 by naming Ashirbad, Kailash, Patal, Kuria and Janu being members of the unlawful assembly. She also named Ashirbad, Kailash and Patal responsible for assaulting Paban. Such corroboration could not be shaken during cross-examination. Hence, we are definite that Ashirbad, Kailash and Patal were directly responsible for the death caused to Paban. They were also responsible for forming an unlawful assembly and causing injuries to others referred to above. Ramna, Gazia, Surya, Laona, Janu, Naresh, Karia, Pachua, Sukhlal and Sufal were members of the unlawful assembly. They were also present when Paban was killed and others were injured. All of them were armed with deadly weapons as came out in evidence. Hence, they were equally responsible for the incident. Janu was given the benefit of doubt by the Court below as he was not charged with that name although during cross-examination under Section 313 he admitted that his good name was Maheshwar. Since he was given the benefit of doubt we do not wish to modify or upset the order of his acquittal.

17. The appellants were rightly held guilty of the offence and they were sentenced accordingly. We do not find any scope of interference.

18. The appeal fails and is hereby dismissed.

Let a copy of this judgment along with Lower Court Records be sent down at once.

The appellants are now on bail. Their Bail-bonds / Surety Bonds are cancelled. They are directed to surrender before the Court of learned Trial Judge within seven days from the date of receipt of the Lower Court Records by the learned Trial Judge, to serve out the remaining part of their sentences as awarded by the learned Trial Judge, failing which the learned Trial Judge must take appropriate steps in this regard.

14

The learned Trial Judge will proceed in accordance with law if on enquiry he finds reality about the alleged death of the appellant Patal Mahato.

Urgent xerox certified copy will be given to the parties, if applied for.

Kishore Kumar Prasad, J:

I agree.

[ASHIM KUMAR BANERJEE, J.]

[KISHORE KUMAR PRASAD, J.]