IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 186 of 2012
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1. Surendra Mahto @ Surendra Prasad
2. Yamuna Mahto .... …. Appellants

Versus

The State of Jharkhand .... Respondent

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellants : Mr. Bharat Kumar, Advocate
For the State : Mr. Pankaj Kumar Mishra, A.P.P.

Order No.04 / Dated : 10.01.2024

1. Instant appeal is filed against the judgment of conviction and order of sentence dated 13.01.2012 passed by learned District & Sessions Judge No.1, Koderma in Sessions Trial No.578 of 2003 whereby and whereunder the appellants have been convicted under Sections 324/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years.

2. The case of the prosecution, in brief, as set out in the F.I.R. lodged by Ram Balak Mahto on 30.01.2003 is that on the same day at 10'O Clock, Surendra Mahto, Yamuna Mahto and Karu Mahto, conjointly assaulted him in which Surendra Mahto gave a blow with iron rod resulting in injury on his head.

3. The genesis of the offence is land dispute with respect to Khata No.42, Plot No.990 area 16 decimals over which the informant had constructed his house. It is alleged that after the incidence, the accused persons took away the bamboo and the thatch of his house.

4. On the basis of written report, Koderma (Satgawan) P.S. Case No.6/2003 was registered under Sections 341, 323, 324, 307/34 of the Indian Penal Code. The police, on investigation, submitted charge sheet against Karu Mahto and Yamuna Mahto and not against Surendra Mahto (Appellant No.1). After cognizance, charge was framed against both the accused persons under Sections 307/34 of the Indian Penal Code on 04.02.2006. Learned trial Court, during trial, arrayed Appellant No.1 as co-accused under Section 319 of the Cr.P.C. and charge was framed against him on 19.01.2006 along with co-accused persons under Section 307/34 of the Indian Penal Code.

5. Altogether, six witnesses were examined on behalf of prosecution and the injury report, F.I.R. and other relevant documents were marked as exhibit.

6. After the statement of accused persons under Section 313 of the Cr.P.C., four defence witnesses were examined. Learned trial Court, on considering the evidence, recorded a finding that informant-Ram Balak Mahto sustained grievous injury showing depressed fracture on scalp which was inflicted by Surendra Mahto. Considering the evidence and overall facts and circumstance, conviction under

Sections 324/34 of the Indian Penal Code was returned by the learned trial Court.

7. One of the co-accused, Karu Mahto died during trial and trial abated against him.

8. The judgment of conviction and sentence has been assailed on the ground that charge sheet was not submitted against Surendra Mahto/Appellant no.1 as three prosecution witnesses had not supported the allegation of assault inflicted by him in their statement under Section 161 of the Cr.P.C.

9. P.W. 1- Birendra Prasad, P.W.3- Arjun Prasad in their cross-examination stated that they had not been examined by the police during investigation, but the I.O. has not been examined causing prejudice to the defence witness. The statement of the witnesses have been recorded first time during trial and reliance cannot be placed on their testimony.

10. The main plea of appellant no.1 is that at the relevant time of incidence, he was working in CPWD, Delhi whereas the incidence took place at Koderma in Jharkhand which is at more than 1000 km. In support of this contention, Exhibit A & B have been adduced into evidence. As per the Exhibit-A which is the attendance sheet and Exhibit B is certificate issued by Junior Engineer, CPWD, New Delhi. The appellant no.1 was working as Beldar from 27.01.2003 to 01.02.2003 at the work site. It is also submitted that X-ray report has not been brought on record and even before the Doctor to show that fracture has been sustained by the informant.

11. Learned A.P.P. has defended the impugned judgment of conviction and sentence. It is submitted that the informant of the case is injured and the case has been lodged without any delay on the very same day of the incidence in which he has stated that he has given a vivid account of the incidence stating that it was appellant no.1, who had inflicted blow with iron rod. The witnesses have fully supported the case of the prosecution.

12. Having considered the submissions advanced on behalf of both sides, the law is settled that the testimony of the injured witness is to be given higher degree of credence considering the fact that he will not implicate some other persons leaving aside the main assailant. The factum of incidence is supported by consistent testimony of all the prosecution witnesses including the informant.

13. Altogether four witnesses have been examined on behalf of defence, but none of them have stated anything about the incidence and they are formal witness, who have proved different documents. The Doctor, who issued the injury report, has been examined as P.W.5 and has deposed that he examined the informant on 30.01.2003 and found following injuries:-

I. *Sharp cut injury at the left side of scalp showing depressed fracture of scalp bone measuring 3" x ½" x ½".*

II. *Abrasion over root of nose ¼ c.m. x ¼ c.m.*

Injury was caused within six hours. In his cross-examination, he has stated that he has suggested for X-ray, but X-ray was not found before him.

14. The F.I.R. was lodged immediately after the incidence. All the witnesses have consistently stated about the incidence and no significant contradiction has surfaced in their account. The informant has specifically stated in the F.I.R. which was lodged shortly after the incidence that it was appellant no.1, who had inflicted head injury to him by iron rod (Khanti) and other two manhandled him and ousted him from there. The testimony of the informant (P.W. 4) regarding the manner of incidence, is corroborated by the written report in terms of Section 157 of the Evidence Act. The informant is 84 years old man and has stood the test of cross-examination. In para 6, he has deposed that Surendra Prasad was working at Delhi, but at the time of incidence, he had come to the village in connection with some family function (Chhathiyari). Defence has failed to elicit any contradiction in his account. An injured witness, unless there is any evidence or circumstance, to cast doubt on his account is entitled to a higher degree of credence. It has been held in ***Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259**

> *"Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone."*

15. Other three eye witnesses have corroborated the testimony of the informant. The testimonies of the witnesses, read as whole, does not appear to be exaggerated or tainted by falsehood. P.W. 1 and P.W. 3 have emphatically stated in the cross-examination that they were not examined by the police, but this by itself, cannot be a ground to disbelieve their account. I.O has not been examined

16. The main plea of the appellant no.1 hinges on the plea of alibi. The law is settled that the plea of alibi is to be taken at the earliest and should not be an afterthought. Law of alibi has been summed up in ***Binay Kumar Singh v. State of Bihar*, (1997) 1 SCC 283**

> ***23.*** *The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of*

> *occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.(emphasis supplied)*

17. The complicity of Appellant no.1 in the incidence as the main assailant who inflicted the blow by rod, has consistently been stated by the informant, both in the F.I.R. as well as in his deposition. His account has been duly supported by oral as well as medical evidence. There is no contradiction in the account of witnesses to cast any doubt on their testimony. Learned trial Court has assigned specific reason to discard the plea of alibi, and I do not see any reason to differ with the finding of fact recorded by the trial Court. The authority issuing the certificate of attendance of Appellant no.1, has not been examined and in view of the cogent, reliable and trustworthy evidence of the oral witness, I'm not inclined to accept the plea of alibi which is accordingly rejected.

18. Non-examination of the Investigating Officer has caused no prejudice to the defence, as neither the attendance of the informant (PW4), nor PW3 has been drawn towards their earlier statements given to the police under Section 161 Cr.P.C. There is definite evidence that both of the appellants conjointly assaulted the injured on account of land dispute in order to oust them from the settled possession of his hutment.

Under the circumstance, the judgment of conviction is affirmed.

On the point of sentence, considering the nature and genesis of offence, background of the appellants, this Court is of the view that this is a fit case for extending the benefit under Section 4 of the Probation of Offenders Act, 1958. Accordingly, instead of sentencing the appellants to punishment, they are directed to be released them interim into a bond of Rs.25,000/- with two sureties for one year from the date of order.

Cr. Appeal is dismissed with modification of sentence.

(Gautam Kumar Choudhary, J.)

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