

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No.176 of 1993 (R)

Nirakar Mahato, son of late Narayan Mahato, Resident of Village Naryandih,
P.S. Kharswan, District-Singbhum West ... **Appellant**

Versus

The State of Bihar (now Jharkhand) ... **Respondents**

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CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellant : Ms. Sonam, AC to Amicus

For the Respondent : Mr. Viswanath Ray, Spl. PP

4th April 2024

Per, Shree Chandrashekhar, A.C.J.

Alok Mahto and Nirakar Mahto, who were convicted and sentenced to imprisonment for life under Section 302 read with Section 34 of the Indian Penal Code for causing death of Madho Singh Munda filed this criminal appeal under Section 374(2) of the Code of Criminal Procedure.

2. Kharsawan P.S. Case No. 26 of 1991 was registered on the basis of the *fardebayan* of Parsuram Mahto, which was recorded by the officer in-charge of Kharsawan P.S. around 7.00 am on 3rd of July 1991. In his *fardebayan*, the informant made allegations of assault upon Madho Singh Munda by Alok Mahto, Nirakar Mahto and Gomha Mahto, who according to his wife had come to his house in the evening of 2nd of July 1991 and dragged Madho Singh Munda outside the house. The informant stated before the officer in-charge of Kharsawan P.S. that he received information about the occurrence from Chandmoni Devi, who is his wife. According to the informant, Nirakar Mahato and his brothers were annoyed with the fact that he had employed Madho Singh Munda in his house. The informant further alleged that the accused persons had an eagle eye on his properties which they wanted to grab; the informant has no child.

3. In course of investigation, the complicity of Alok Mahato, Nirakar Mahato and Gohma Mahato was found established in the murder of Madho Singh Munda and, accordingly, they were sent up for trial. However, after framing of the charge on 15th May 1992 under section 302 read with 34 of the Indian Penal Code, Gomha Mahto died on 4th August 1992. Therefore, the trial commenced against Alok Mahto and Nirakar Mahto. It is recorded in the order

passed in the present proceeding on 28th March 2019 that Alok Mahto also passed away during pendency of this criminal appeal.

4. In the trial, the prosecution examined 11 witnesses in support of the charge of murder against the aforementioned accused persons. The case of the prosecution is that Nirakar Mahto caused injury on the head and other parts of the person of Madho Singh Munda with a stone weighing about 3 ½ kg. The prosecution has projected PW-5 Chandmoni Devi and PW-6 Padmini Devi as the eyewitnesses. According to PW-5 and PW-6, PW-1 Jagadish Mahto, PW-2 Pursottam Mahto and PW-3 Santosh Kumar Mahto who are the co-villagers had also witnessed assault upon Madho Singh Munda by Nirakar Mahto. The trial judge on a consideration of the materials laid in Session Trial No.26 of 1991 held that Nirakar Mahto and Alok Mahto are guilty under Section 302 read with Section 34 of the Indian Penal Code and convicted them for the said offence.

5. The trial Judge scrutinized the evidence laid during the trial in the following manner:

“17. On making scrutiny of the evidence of the evidence of PWs, I find that they have also described about the position of dead body consistently that the dead body was lying flat at the P.O. They have also consistently deposed as to the position of body at the P.O. The inquest report Ext.5 finds sufficient corroboration from the testimony of other PWs including the I.O. The prosecution has given sufficient explanation as to non-examination of F.I.R. witness namely Rotho. It has come in the evidence of PWs that Rotho Mahato has died during pendency of trial. Though PW-1 is not FIR witness but his presence on the P.O. has been corroborated in the evidence of PWs-5 and 6 the main witnesses who have witnessed the whole part of the occurrence and the presence of PWs have also been corroborated in their respective evidence.

18. The learned defence counsel further argued that the whole of the prosecution case becomes doubtful due to this fact that in the first information report there is no description second part of the manner of occurrence as to dragging of the dead body of deceased Madho Singh Munda through the village path whereas the informant PW-7 and other PWs have deposed also on point of the latter part of occurrence and that when the informant reached house in the night of 02.07.1991 before leaving for P.S. he came to know about the occurrence from his two wives Chandmoni and Padmoni PWs-5 and 6 respectively but in spite of that the description as to the second part is conspicuously absent in the first information report Ext.4. In my opinion the absence of the description as to second part of the occurrence has not made the whole prosecution case doubtful because the informant himself was not an eyewitness to the occurrence. He came to know about the occurrence and so he lodged first information report as to main part of occurrence regarding the manner of occurrence of murder of his servant. In this context I do not find any contradiction in the evidence of PW-

7 or his two wives PWs-5 and 6 or in the evidence of PW-1 as to description of the manner of occurrence. The delay in lodging of F.I.R. has been explained sufficiently on behalf of prosecution. So, there is no applicability of ruling report in A.I.R.1973 Supreme Court 501 as referred by the learned counsel for the defence.

19. Ext. A is a letter addressed by informant PW-7 on 27.10.1990 to one Gouri Shankar Bauri, it does not throw any light upon the probability of defence version that a false case had been instituted against the accused persons.

20. Thus, on consideration of the evidence discussed above and also in view of the facts and circumstance of the case, I am of the view that the prosecution has succeeded in proving its case and also the charge against the accused persons that the accused in furtherance of common intention committed murder by causing death of deceased Madho Singh Munda. It has been proved that all the three accused persons by sharing common intention committed murder of deceased Madho Singh Munda on 02.07.1991 at village Naryandih. The prosecution with the help of cogent evidence has succeeded in establishing the charge levelled against the above named accused.

In the result, accused Alok Mahato and Nirakar Mahato are held guilty to the charge U/S 302/34 of the I.P.C. and they both are convicted thereunder.”

6. Ms. Sonam the learned AC to learned Amicus submits that enmity between the parties is admitted and having regard to the materials on record, the appellant Nirakar Mahto cannot be held guilty for causing death of Madho Singh Munda.

7. There is no bar in law in examining an inimical, interested or related witness by a party to support his case. A witness may be closely related to the victim or inimical to the accused but on that ground his testimony cannot be treated as tainted. When a crime is committed in the circumstances as described by the witnesses in the present case the family members and co-villagers are the natural and competent witnesses. In *“Masalti v. State of U.P” AIR 1965 SC 202* the Hon'ble Supreme Court cautioned that mechanical rejection of evidence of interested witnesses on the sole ground that it is partisan would invariably lead to failure of justice. In *“Sucha Singh v. State of Punjab” (2003) 7 SCC 643* the Hon'ble Supreme Court held that relationship is not a factor to affect credibility of a witness, for it is more often that the relatives would not conceal the actual culprit and make allegation against an innocent person. However, there is another rule of caution that wherever it is shown to the Court that the parties are at loggerheads, this puts the criminal Court on guard to scrutinize the testimony

of an interested/inimical witness with due care and caution.

8. In “*Ramashish Rai v. Jagdish Singh*” (2005) 10 SCC 498 the Hon’ble Supreme Court has observed as under:

“7. The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence...”

9. PW-5 and PW-6 are the wives of the informant. In their examination-in-chief, they stated that the accused were issuing threats to their husband for grabbing the properties. Both the witnesses admitted that when the accused persons came to their house in the evening of 2nd of July 1991, they were carrying no weapon. In her cross-examination, PW-5 admitted that when the accused were dragging Madho Singh outside the house they raised *hulla* but no one from the village came there. She further stated that when she went out of her house she found Madho Singh Munda unconscious. She further stated that when the accused were dragging Madho Singh Munda towards the forest the incident was witnessed by several villagers. However, PW-6 in her cross-examination stated that Nirakar Mahto assaulted Madho Singh with a stone on his head. She further stated that several villagers had assembled there.

10. The statements of PW-5 and PW-6 are apparently contradictory and cannot be reconciled in such a situation like the present one. Here two projected eyewitnesses have contradicted each other on every material aspect of the case; therefore, it is not possible to conclusively hold that Nirakar Mahto caused the death of Madho Singh Munda. According to the prosecution witnesses, several villagers witnessed the occurrence but no one came to rescue Madho Singh Munda. This is quite unnatural that in a thickly populated village no one shall try to intervene and rescue the deceased. PW-7 affirmed in the Court the statement made in his *fardebayan*, but then, he is not an eyewitness. The prosecution case is full of inconsistencies and no reliance can be placed on the testimony of PW-5 and PW-6. There is another reason why these witnesses cannot be held truthful.

11. It is well-settled in law that the minor discrepancies in the evidence of a prosecution witness are not given undue emphasize but where the ocular

evidence seriously challenges the medical evidence, the prosecution case must be held inconsistent. Therefore, wherever there is a gross contradiction between medical evidence and oral evidence, the ocular evidence may be disbelieved. This is the case of the prosecution that PW-5 and PW-6 admitted in their cross-examination that when the accused persons arrived to their house they were not carrying any weapon. Later, PW-6 stated that Nirakar Mahto assaulted Madho Singh with a heavy stone on his head. As PW-8, the doctor who conducted autopsy over the dead body of Madho Singh Munda found the following injuries on his person:

1. The lacerated injuries 2"x 1/2"x 2" over the left side of the scalp
2. Abrasion – 6"x 4" over the chest.
3. Abrasion – 5" x 3" over the abdomen.
4. Abrasion – 7"x 2" over left knee joint
5. swelling over the frontal region of the scalp

12. The opinion of the doctor that Madho Singh Munda died due to shock and hemorrhage is quite revealing inasmuch as a heavy stone blow would have caused fracture or some injuries of like nature on the head; which, however, is not the finding of the doctor.

13. This is fundamental in law that the involvement of the accused and the role played by him must be conclusively established during the trial. However, as we have noticed hereinabove, from the evidence tendered by PW-5 and PW-6 it is not possible to hold that Nirakar Mahto is the person who caused death of Madho Singh Munda.

14. In view of the above discussions, this criminal appeal is allowed and the appellant is acquitted of the charge of murder framed against him alongwith other two persons. The appellant, who is on bail, is discharged from the liability of the bail bonds furnished by him in Sessions Trial No.26 of 1991.

15. Let the lower court record be transmitted to the Court concerned.

16. We record our appreciation for the assistance rendered by Ms. Sonam, the learned AC to the learned Amicus. Payment of Rs. 11,000/- shall be made to the learned AC to the learned Amicus by the Jharkhand High Court Legal Services Committee.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)