

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.22-23 OF 2021
**(Arising out of Petition for Special Leave to
Appeal (Criminal) Nos.8973-8974 of 2019)**

MIHIR GOPE ETC.

...APPELLANTS

VERSUS

THE STATE OF JHARKHAND

...RESPONDENT

J U D G M E N T

ANIRUDDHA BOSE, J.

Leave granted.

2. Anil Mahto and Jatu Mahto had died from injuries received in consequence of assaults on them on 20th August, 2005 over a land related dispute. Certain other members of the appellant's family were also injured on account of assault as a result of the same dispute. The appellants are two sons of one Manohar Gope, with

whom the dispute had arisen. The cause of the dispute with the members of the deceased victims' family is specifically related to the construction of a hut. The prosecution's case is that certain members of the Gope family were the assailants. The appellants before us are Mihir Gope (in Petition for Special Leave to Appeal (Crl.) No.8973 of 2019) and Prabhat Gope (in Petition for Special Leave to Appeal (Crl.) No.8974 of 2019). They have been held guilty by the Trial Court (Additional Sessions Judge, Fast Track Court-IV, Bokaro) for committing offences under Sections 341, 307, 325, and 302 read with Section 34 of the Indian Penal Code, 1860 (the Code). The Trial Court sentenced the two appellants to undergo rigorous imprisonment for life for committing offence under Section 302 of the Code, simple imprisonment for a month in relation to offence under Section 341 of the Code, rigorous imprisonment for 5 years for offence under Section 325 of the Code, and rigorous imprisonment for 7 years for offence under

Section 307 of the Code. The sentences had been directed to run concurrently by the Trial Court. Altogether five persons including the two appellants were tried for the offences initiated by a fardbeyan of one Kasi Ram Mahto on 20th August 2005, being the date of occurrence of the offence. In the depositions as reproduced in the paperbook, he has been referred to in some places as Kari Ram. Similarly, the deceased victim Jatu Mahto has been referred to as Jadu, Jethu, Jattu and Indu by different witnesses. We shall, however, refer to them as Kasi Ram and Jatu in this judgment, ignoring these discrepancies. None of the parties has raised any question or dispute on this count. On the basis of the said fardbeyan, First Information Report was registered on the same date in Pindrajora police station of Bokaro district in the State of Jharkhand. In this judgment, we shall also be referring to the accused persons as also victims and members of their family by their first names only. Kasi Ram himself was injured in the assault. He

was examined as Prosecution Witness no.12 in the trial. Major part of the assault on the members of the Mahto family, particularly on Anil, Jatu and Kasi Ram was attributed to Manohar in the fardbeyan and the prosecution witnesses have broadly corroborated the content of the fardbeyan. The High Court, in appeals by the four convicted accused persons, sustained the judgment of conviction and orders of sentences of these two appellants. The judgment of conviction of one of the accused persons, Usha Devi (wife of Mihir), was set aside by the High Court. The decision of the High Court was delivered on 10th October, 2018.

3. The fardbeyan was recorded at Bokaro General Hospital (BGH). It was disclosed therein that Kasi Ram, the informant, with his wife Puna Devi had reached the place of occurrence at Obra Mouza from their place of residence at Bokaro on receiving a phone call from his brother Premchand (PW-11). The phone call conveyed

that Manohar had constructed a hut on the land of the informant. Jatu, Anil, Premchand, Puranchand, Dakshineshwar, Mukteshwar and Vijay- all members of the Mahto family had also reached the place of occurrence when Kasi Ram and Puna Devi reached the spot. On reaching the place of occurrence at about 8 a.m. on that date, they found a hut with dali-khapra (earthen roof-tiles) on the land in question. Substantial evidence was led before the Trial Court on title or ownership of the land on which the hut was constructed. But that factor is not of much relevance so far as the present appeals are concerned, except that the construction of the hut formed the genesis of the dispute and could be related to motive of the crime. Manohar, the main assailant along with his sons- Mihir, Prabhat and Kailash were also at the place of occurrence, as it transpires from the evidence of Kasi Ram and other prosecution witnesses. There was exchange of words mainly between Manohar and Kasi Ram, after which Manohar had attacked Anil on

his head with an iron rod, as a result of which Anil collapsed on the ground and became unconscious. On the informant's attempt to rescue Anil, he was also assaulted by Manohar on his hands, head, and back. As per prosecution evidence, the three sons of Manohar- Mihir (first appellant), Prabhat (second appellant) and Kailash were supplied with a tangi (a variant of axe), sawal (crowbar) and a gupti (a longish sword) by Usha Devi. Before the assault started, Kasi Ram wanted Manohar to go to the police station with him, presumably to sort out the dispute, but Manohar refused to go there. Manohar had asserted that it was his land. It was at that stage Manohar assaulted Anil on his head with the iron rod. As regards the sequence in which the assault took place, Kasi Ram's evidence is that when "Indu went to tie Anil with towel then Manohar assaulted him on head with rod and he became injured". The name "Indu", as has been recorded in the deposition of Kasi Ram (as it appears in the paperbook) obviously refers to Jatu. In the

sequence of events narrated by the other eye-witnesses, being PW-2, PW-3, PW-4, PW-5, PW-7 and PW-11, this particular victim has been referred to as Jatu.

4. Prosecution evidence was accepted by the Trial Court on the aspect of description of assault by the accused persons which resulted in death of Anil and Jatu and also resulted in injuries to Kasi Ram, Premchand and Puranchand. On his plea of juvenility, the case of Kailash was separated and sent to the Juvenile Justice Board. Usha Devi was let off by the High Court on the reasoning that there was no allegation of assault by her. Anil had passed away on 20th August, 2005 itself at BGH, whereas Jatu passed away on the next day, i.e. 21st August, 2005. The injured persons were initially taken to Chas General Hospital and after initial treatment, referred to BGH. The former has been described as the referral hospital in course of the proceedings before the Trial Court and the High Court.

5. In the First Information Report, Manohar and his three sons, Mihir, Prabhat and Kailash were named as accused persons. After investigation, charge-sheet was submitted arraigning four of them as also Usha Devi as accused persons. Records pertaining to Kailash were sent to the Juvenile Justice Board. All four were convicted and sentenced to imprisonment by the Trial Court. We have already indicated the sentence imposed on them.

6. The prosecution examined altogether sixteen witnesses. Seven among them, being Puna Devi (PW-2), Puranchand (PW-3), Vijay Kumar (PW-4), Mukteshwar (PW-5), Dakshineshwar (PW-7), Premchand (PW-11) and Kasi Ram (PW-12) deposed as eye-witnesses. The autopsy surgeon Dr. Pramod Kumar, who was examined as PW-9 attributed the cause of death of the two deceased victims to severe head injuries and excessive bleeding leading to shock and cardio respiratory failure. In the case of Jatu,

blood coagulate was found in pia and dura mater of skull leading to shock and cardio respiratory failure. On dissection of Anil's skull, blood clots in "profuse amount" were found in between pia and dura mater, i.e. the membranes that envelop the brain and spinal cord and separate them from the walls of their bony cases (skull and vertebral column). External injury of Anil, as per deposition of PW-9 was "lacerated wound with fracture of occipital bone size 4½" X 1" bone deep". Jatu's external injuries were "fracture of occipital bone with swelling; fracture of left parietal bone with lacerated wound.....". PW-13, Dr. Shishir Kumar Singh Munda had examined Premchand (PW-11, injured witness) and found his injuries to be simple in nature caused by hard blunt object. There were lacerated wounds on his left hand and scalp, right fronto parietal region 2" X 1" X 1/3". The two other medical witnesses were Dr. Dhananjay Rajak (PW-14) and Dr. Narendra Kumar Das (PW-15). Dr. Rajak had examined Anil and Jatu on the same day at BGH. He

found, in case of Anil, a stitched wound on occipital parietal area 4” long. In case of Jatu, Dr. Rajak has deposed that he found “1 stitched wound on occipital area 3” long”. The injuries in both cases were attributed to hard blunt object by the PW-14. In case of Premchand, he referred to the following injuries in his statements made in course of examination :-

- “i. contusion left shoulder 3” X 1”
- ii. contusion scapular left 8” X 1”
- iii. contusion scapular region right 8” X 1/2”.
Another contusion 6” X 1”
- iv. stitched wound left hand.”

The injuries of Premchand were found to be simple in nature caused by hard blunt substance by Dr. Rajak. Dr. Narendra Kumar Das (PW-15) was the head of the department of Neurosurgery at BGH at the material point of time. He assessed the injuries of Anil and Jatu to be grievous. Injury of Premchand, according to him, was simple in nature and possibly caused by a hard and blunt object. So far as injuries of Kasi Ram are

concerned, Dr. Shishir Kumar Singh Munda (PW-13) deposed that he had lacerated wound on right parietal region and on his right palm. According to this medical witness, both the injuries were simple in nature and caused by hard blunt objects.

7. The assessment of injuries of Jatu, Anil and Premchand by Dr. Narendra Kumar Das would appear from the following part of his deposition: -

“1. On 20.08.05 I was posted at BGH in same capacity. Patient Mr. Jethu Mehto was seen and treated by me. He was treated for severe head injury.

2. CT scan of brain was done.

CT scan no. 22305 dated 20.08.05.

CT scan shows multiple intracerebral hemorrhage in the left temporo-parietal region with fracture of left parietal bone. The nature of injury was grievous. This report is prepared and signed by me. Mark it as Ext. 7/5.

3. The injury may be caused by hard and blunt object.

4. On the same day I had examined Anil Kr. Mahto. His hospital number was 13538. He was treated for severe head injury. CT scan brain was done. Number is 22306 dt. 20.08.05. CT Scan shows

multiple intra cerebral hemorrhage with brain edema and fracture of left parital and occipital bone. Nature of injury was grievous possible by hard and blunt object.

5. This report is prepared by me and signed by me mark it as Ext. 7/6.

6. On the same day I had examined Premchand Mahto. He was treated for multiple injuries.

i. Head injury : CT Scan brain was done. Number is 23307 dt. 20.08.05. CT scan shows no evidence of intra cerebral hemorrhage or fracture. The nature was simple.

ii. Compound fracture of IInd metacarpal bone left hand. Nature was grievous possibly by hard and blunt object. This report is prepared by me. Mark it as Ext. 7/7.

7. The injury on the person of Jethu Mahto may be caused if someone fall on heavy object. There is no CT Scan separate with this report. On the person of Anil Mahto also the injury may be caused due to fall, so with Premchand Mahto.”

(quoted verbatim)

8. The depositions of the eyewitnesses for the prosecution broadly gives the description of events that

corresponds with the fardbeyan, but there are discrepancies on the role of each of the accused persons in effecting specific strikes on the victims individually. Prosecution also sought conviction on the basis of a confessional statement of Manohar. Prosecution case is that Manohar's statement led to the recovery of a sawal and a stick from his house. There were two seizure witnesses Laxmi Devi (PW-1) and Gulichand Mahto (PW-10). The latter was presented by the prosecution as seizure witness of blood-soaked soil. At this stage, however, his deposition has insignificant impact on these appeals as prosecution has relied upon other direct evidences, primarily eyewitness account and evidence of the medical practitioners, and not much turns in these appeals on recovery of blood-soaked earth. Laxmi Devi is the wife of Prabhat Gope. She was presented as a witness by the prosecution on seizure of the sawal and the stick from Manohar's house. In her deposition,

however, she has stated that the paper on which she had signed was blank.

9. Two witnesses were examined by the defence, Netai Gope and Shambhu Gope. Both of them deposed as eyewitnesses. As recorded in the Trial Court's judgment, they sought to attribute the injuries to acts on the part of the informant and his family members only. It was stated by them that the informant and his brothers had gathered near the hut armed with several weapons, the likes of which we have already referred to. When they tried to pull down the tiled hut, the defence witnesses stated, some of the roof tiles fell on the members of the informant's side and that was the cause of the injuries. The appellants sought to buttress this defence by drawing our attention to the depositions of PW-9, PW-13 and PW-15, all medical professionals. They stated in their examination that the injuries treated or analysed by them could be caused due to fall. But this opinion of the

medical practitioners was on probable cause. The story of accidental injuries caused by the informant's side themselves however was not believed by either the Trial Court or the High Court. We do not find any flaw in the reasoning of the two courts of fact on this aspect.

10. The question, in the given context, which falls for determination is as to whether these two appellants can be convicted under the aforesaid provisions of the Code. It is a fact that all the eyewitnesses were related to the victims, but for that very reason we cannot disbelieve their version, particularly since the Trial Court and the High Court found no reason to reject their evidence. The story of the defence that the injuries of the victims were unintentionally inflicted by falling tiles when the members of the victims' family were dismantling the structure does not inspire confidence. The prosecution witnesses have been consistent and uniform in their

version that it was Manohar and his sons who had caused the injuries.

11. The appellants before us are Mihir and Prabhat. The evidence of the seven prosecution witnesses, who have deposed as eyewitnesses, being Puna Devi (PW-2), wife of Kasi Ram (the informant), Puranchand (PW-3), an injured witness, Vijay Kumar (PW-4), Mukteshwar (PW-5), Dakshineshwar (PW-7), Premchand (PW-11) and Kasi Ram (PW-12) are uniform in that Manohar had dealt the first blow to Anil, followed by a blow on Kasi Ram and thereafter on Jatu at the time the latter was attending to injured Anil. The seven witnesses are also uniform in saying that Manohar dealt the blows to these three victims using an iron rod.

12. So far as Mihir and Prabhat are concerned, evidence of Kasi Ram (PW-12) is that Manohar assaulted Anil first, then him and thereafter Jatu. He, in his deposition has referred to sons of Manohar as “boys of Manohar”, and

assault by them has been specified to be on Puranchand and Premchand. PW-2 has also ascribed the blows on Anil and Jatu to Manohar. At the same time, she has stated that Mihir had assaulted Anil and Jatu on their heads. Assault on Anil and Jatu has also been ascribed to Prabhat. PW-2 and PW-5 have stated that Usha Devi, whose conviction was set aside by the High Court had supplied an axe to Mihir, sawal to Prabhat, and a gupti to Kailash. Puna Devi has deposed that Mihir as well as Prabhat had assaulted Anil, Jatu, Premchand, Puranchand and Kasi Ram (her husband-the informant). Puranchand's (PW-3) evidence is that Mihir, Prabhat and Kailash assaulted Anil with an axe on the back of his head. He also deposed that all the four accused had assaulted Anil, Premchand and Jatu. To Mihir, he attributed assault by an axe. Vijay Kumar (PW-4) has attributed collective assault to three sons of Manohar on Jatu, Premchand and Puranchand. He also referred to strikes by Manohar on Anil, Kasi Ram and Jatu.

Evidence of Mukteshwar (PW-5) is that Mihir assaulted Anil and Jatu with the axe on their heads whereas Prabhat with another brother assaulted Premchand and Puranchand. Dakshineshwar's (PW-7) narration of the assault in his deposition is also broadly similar whereas Premchand (PW-11) has stated that Jatu was attacked by Mihir and Manohar using a tangi and Puranchand and himself were attacked by Kailash and Prabhat with iron rod. The depositions of the prosecution witnesses thus are not uniform on the aspect of the role of these two appellants in assaulting Anil and Jatu. Usha Devi, against whom allegation was of supply of weapons to Mihir, Prabhat and Kailash, has been acquitted by the High Court.

13. Learned counsel for the appellants has stressed on the fact that injury records of the referral hospital were not produced or made exhibits at the stage of the trial. But from the depositions of the four medical

practitioners, injuries of Anil, Jatu, Kasi Ram and Premchand are revealed. There is no medical evidence of any injury having been caused to Puranchand. While we analyse the evidence relating to injuries of Anil and Jatu, we find that the autopsy surgeon (PW-9) found only one injury on the head of Anil being fractured occipital bone. This was a lacerated wound. So far as Jatu is concerned, we find from his deposition that he had a fractured occipital bone with swelling and fracture of left parietal bone with lacerated wound. Dr. Shishir Kumar Singh Munda (PW-13) had examined Premchand and found lacerated wound on his left hand as also on his scalp in the right fronto parietal region. He also examined Kasi Ram and found two injuries, lacerated wound on right parietal region and lacerated wound on the right palm. Dr. Dhananjay Rajak (PW-14) had examined Anil on the day of occurrence at about 11.30 a.m. in the casualty department of BGH. His deposition also reveals that Anil had a stitched wound on the occipital parietal area. On

Jatu, he found a 3” long stitched wound on the occipital area. As regards injuries of Premchand, he observed contusions and we have referred to his observations in earlier part of this judgment. Dr. Narendra Kumar Das (PW-15) had examined Jatu, and in his deposition he has stated that his CT scan showed multiple intracerebral haemorrhage in the left temporoparietal region with fracture of the left parietal bone. As regards probable cause of the injuries, PW-9 stated that injury to Anil could be caused if he had fallen on a hard surface. Jatu’s could have been caused if some heavy blunt object fell on his head. Cause of the other injury to Jatu, according to him, could occur if someone smashed on small or heavy substance. Dr. Narendra Kumar Das (PW-15) on the other hand interpreted Jatu’s CT scan in the following manner:-

“CT scan shows multiple intracerebral hemorrhage in the left lemproprietal region with fracture of left partial bone...”

14. It would be apparent from the evidence of the medical practitioners that there was only one injury on Anil's head whereas on Jatu's head, there is a probability that he suffered two injuries. But the injuries on Jatu's head cannot be said to have been caused by either axe or tangi, which are sharp edged weapons. Even if we proceed on the basis that both axe and tangi have blunt sides and such blunt sides were used to strike, that very fact cannot establish involvement of both Mihir and Prabhat in striking Anil and Jatu. Thus, we do not think the Trial Court and the High Court had rightly concluded on involvement of Mihir and Prabhat in assault of Anil and Jatu so as to implicate them for murder under Section 302 read with Section 34 of the code. The eye witnesses' accounts, as we have already observed shows element of exaggeration and inconsistency in implicating both Mihir and Prabhat for their strikes on Jatu. There is apparent inconsistency in the eye witness account in describing the assaults by these two appellants on Anil

and Jatu. PW-2 has attributed assault on both Anil and Jatu to Manohar and all his sons. This is a very generalised description. PW-3 has stated that Manohar, Mihir and Prabhat (collectively referring to them with the pronoun “they”) had assaulted Jatu. P.W. 4’s evidence on assault against Anil and Jatu is not specific, but general. PW-5 has stated that Mihir had assaulted Anil and Jatu, apart from Manohar’s strikes. PW-7’s deposition is that both Mihir and Manohar struck Jatu. PW-11 attributes strike by Mihir on Jatu but he has not implicated Prabhat in any form of assault on Anil or Jatu. Thus, if we compare the number of injuries on Anil and Jatu as it transpires from the evidence of medical practitioners, which is three at the most, they do not match with the number of strikes made by Manohar, Mihir and Prabhat, as stated on oath by these witnesses. In our opinion, we cannot rely on the account of assault given by these witnesses to the extent they relate to strikes by Mihir and Prabhat. Barring PW-12, the account of the incident

narrated by the other eye-witnesses tend to be based on overall impression of the strikes rather than factual narration of events. We consider it safer to rely on the evidence of PW-12, who has given specific and trustworthy account of the individual assaults. We do not think the prosecution has been able to prove beyond reasonable doubt involvement of these two appellants, Mihir and Prabhat in delivering the blows to Anil and Jatu.

15. We also find that though there were assaults by Manohar, Mihir and Prabhat prosecution has failed to establish on the basis of evidence that these two appellants shared common intention with Manohar. Their strikes on the victims can be segregated from those made by Manohar, as it transpires from evidence. Neither Mihir nor Prabhat could be held to have been involved in assault on Anil and Jatu, which forms the basis of

conviction of the appellants under Section 302 of the Code.

16. Relying on a decision of a coordinate Bench, **Manoj Kumar vs State of Himachal Pradesh** [(2018) 7 SCC 327], it was urged on behalf of the appellants that the offence of the appellants could be brought within exception 4 to Section 300 of the Code and Part II of Section 304 thereof, could be applied to the appellants. But having regard to what we have held, the ratio of that decision does not apply in the facts of this case.

17. We, accordingly, set aside the judgment of conviction of Mihir and Prabhat under Section 302 read with Section 34 of the Code and the order of sentence under the aforesaid provisions is also set aside. As we find from evidence of the medical professionals that injuries on Kasi Ram and Premchand were simple in nature, judgment of the High Court on their conviction and sentence under Section 325 of the Code is also set aside.

We also set aside the conviction and sentence of these two appellants under Section 307 of the Code. We hold so primarily on the basis of depositions of the three medical experts, PW-13 (Dr. Shishir Kumar Singh Munda), PW-14 (Dr. Dhananjay Rajak) and PW-15 (Dr. Narendra Kumar Das). Opinion of PW-13, who examined Premchand and Kasi Ram, found both their injuries to be simple, formed of lacerated wound. In examining Premchand, PW-14's opinion as regards nature of injury was the same. It was simple injury. Premchand's CT scan, as explained by PW-15, did not show any evidence of intracerebral hemorrhage or fracture. He also found such injury to be simple. Considering the weapons of assault Mihir and Prabhat were meant to have had used in inflicting such injuries, and the nature of injuries they caused on Kasi Ram and Premchand, we do not think the two appellants had the intention or knowledge that their acts could have had caused death of Kasi Ram or Premchand. We also do not find any evidence of

commission of offence under Section 341 of the Code. None of the eyewitnesses has stated in course of their examination that Mihir or Prabhat had wrongfully confined them. The appellants are accordingly acquitted of charges under all the aforesaid provisions.

18. In our opinion, however, there is sufficient evidence against Mihir and Prabhat of voluntarily causing hurt by the instruments we have referred to. We have discussed the evidence based on which we come to this conclusion. We hold both the appellants guilty of committing offence under Section 324 of the Code. We impose sentence of three years rigorous imprisonment on both Mihir and Prabhat for committing offence under the aforesaid provision.

19. In the event the appellants or any one of them have served out the sentence of three years of rigorous imprisonment imposed on them in this judgment, such appellant or the appellants, as the case may be, shall be

set free forthwith, unless the custody of the appellants or any one of them is required in any other case. Otherwise, the appellants or any one of them, as the case may be, shall serve out the remaining term.

20. The appeals are partly allowed, in the above terms.

Pending application(s), if any, stand(s) disposed of.

.....J.
(N.V. Ramana)

.....J.
(Surya Kant)

.....J.
(Aniruddha Bose)

New Delhi,
Dated: January 8, 2021